

## UNITED STATES DISTRICT COURT

for the  
District of Delaware

2

In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)The SECOND FLOOR of 144 Kings Hwy. SW, Dover,  
DE 19901

Case No. 12- 167M

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property located in the \_\_\_\_\_ District of \_\_\_\_\_ Delaware (identify the person or describe property to be searched and give its location): See Attachment A, incorporated fully herein.

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized): See Attachment B, incorporated fully herein.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;  
☒ contraband, fruits of crime, or other items illegally possessed;  
☒ property designed for use, intended for use, or used in committing a crime;  
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of 18 U.S.C. § 1344 et al, and the application is based on these facts: See attached affidavit, incorporated herein.

☒ Continued on the attached sheet.

☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

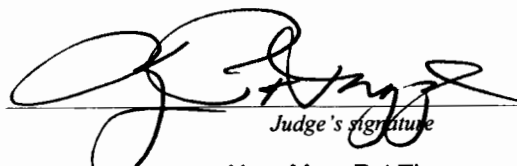
  
Applicant's signature

Special Agent Kevin P. Shannon, FBI  
Printed name and title

Sworn to before me and signed in my presence.

Date: 10/4/12

City and state: Wilmington, DE

  
Judge's signature

Hon. Mary Pat Thyng  
Printed name and title

**AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT**

I, Kevin P. Shannon ("Affiant") being duly sworn and state as follows:

**I. PRELIMINARY INFORMATION**

1. I have been employed as a Special Agent (SA) of the FBI since May, 1990. I have been assigned to the Baltimore Division, Wilmington Resident Agency, since January, 1994. As a Special Agent with the FBI, I am authorized to investigate violations of the laws of the United States and to execute search warrants issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure. I am currently assigned to the criminal investigative squad of the FBI's Wilmington, Delaware Resident Agency, Baltimore Division. I have been trained in investigating white collar crime matters and have experience in cases relating to various types of fraud and other criminal activity, including bank fraud, mortgage fraud, complex financial crimes, election fraud and public corruption. In my experience as a Special Agent with the FBI, I have prepared, assisted and/or participated in the execution of numerous search warrants.

2. This Affidavit is written in support of an application for a warrant to search the second floor of the address located in the District of Delaware at 144 Kings Highway SW, Dover, Delaware, as more particularly described in Attachment A (the "Subject Location") and to seize documents, computers and other evidence of criminal conduct engaged in by MICHAEL A. ZIMMERMAN (hereinafter referred to as "ZIMMERMAN") and his various business entities, as more particularly described in Attachment B.

3. The information contained in this Affidavit is based, in part, upon personal knowledge arising from my participation in this investigation; upon information provided to me by other law enforcement officers and government officials jointly participating in this investigation; and upon information provided by witnesses and review of various documents and records which were provided voluntarily, are publicly available and/or have been obtained pursuant to subpoena. This Affidavit is being submitted for the limited purpose of securing a search warrant, and, as a result, I have not included each and every fact known concerning this investigation. I have set forth only the facts which I believe are necessary to establish probable cause for the

issuance of the requested search warrant. Where the statement of others or the contents of documents and records are related herein, they are related in substance and in part, and not verbatim. Similarly, all assertions concerning dates, numbers and dollar amounts are approximate, based upon information and evidence gathered to date.

## **II. BACKGROUND OF INVESTIGATION AND PROBABLE CAUSE OF CRIMINAL CONDUCT**

4. The FBI, along with several other federal law enforcement agencies, is conducting an investigation of a bank fraud scheme and conspiracy to commit bank fraud engaged in by ZIMMERMAN and others, including business partners and at least one employee of WILMINGTON TRUST COMPANY ("WILMINGTON TRUST"). There is probable cause to believe that ZIMMERMAN and others provided false and fraudulent documentation in order to draw funds from loans obtained from WILMINGTON TRUST for various real estate development projects and, at times, misappropriated those loan proceeds for purposes totally unrelated to the original loans. In addition, there is probable cause to believe that ZIMMERMAN, along with his business partners, devised a plan to purchase, at a significant discount from WILMINGTON TRUST, several of ZIMMERMAN's failing loans through a related third party and withheld relevant information from WILMINGTON TRUST as part of the process.

5. The federal bank fraud statutes which criminalize schemes such as obtaining loan funds through false representations, the unauthorized use of loan proceeds, and engaging in monetary transactions involving specified unlawful activity, are as follows:

**Title 18, United States Code, § 1344 (Bank Fraud):** Whoever knowingly executes or attempts to execute, a scheme or artifice to defraud a financial institution; or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

**Title 18, United States Code, § 1349 (Conspiracy to Commit Bank Fraud):** Any person who attempts or conspires to commit any offense related to various fraud offenses

shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**Title 18, United States Code, § 1014 (False Statement to a Financial Institution):**

Whoever knowingly makes any false statement or report or willfully overvalues any land, property or security for the purpose of influencing in any way the action of any institution the accounts of which are insured by the Federal Deposit Insurance Corporation upon the application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan or any change or extension of the same, by renewal, deferment of action or otherwise shall be fined not more than \$1,000,000.00 or imprisoned not more than 30 years, or both.

**Title 18, United States Code, § 1957 (Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity):** Whoever . . . knowingly engages or attempts to engage in a monetary transaction in criminally derived property in a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished [as provided under the statute].

6. Attachment C, incorporated fully herein, sets forth probable cause to believe that MICHAEL A. ZIMMERMAN has committed bank fraud, in violation of 18 U.S.C. § 1344; committed conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349; provided material false statements to a financial institution, in violation of 18 U.S.C. § 1014; and engaged in monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. § 1957.

7. Attachment C further provides information concerning the other individuals and entities involved in the investigation including the following:

- BBC PROPERTIES, INC. (hereafter referred to as “BBC PROPERTIES”), a real estate development company owned and operated by ZIMMERMAN;
- WILMINGTON TRUST COMPANY (hereafter referred to as “WILMINGTON TRUST”), a financial institution from which ZIMMERMAN received funding for multiple real estate development projects;
- various limited liability companies (hereafter referred to as “ZIMMERMAN-related entities”) established for ZIMMERMAN development projects, including SALT POND PLAZA, LLC (hereafter referred to as “SALT POND”), COMPASS POINTE, LLC (hereafter referred to as “COMPASS POINTE”) and SHOPPES AT FIELDSTONE

VILLAGE (hereafter referred to as "SHOPPES AT FIELDSTONE") and others as described further in Attachment C.

- ZIMMERMAN's investment partners in the ZIMMERMAN-related entities; and
- ONIX Z, LLC (hereafter referred to as "ONIX Z"), the entity created by the principals of THE ONIX GROUP, LLC. to purchase the ZIMMERMAN loans from WILMINGTON TRUST.

8. Furthermore, as set forth below, there is probable cause to believe that evidence relating to the above-referenced offenses will be found at the Subject Location. In particular, there is evidence that ZIMMERMAN retained information related to the development projects involved in the fraud and money laundering scheme, set forth in detail in Attachment C.

9. Based upon the facts and circumstances described in this Affidavit, I respectfully submit that there is probable cause to believe that there is presently contained within the Subject Location, records, files, correspondence, memoranda, computers, storage medium, bank and other financial records, data and other materials more specifically described in Attachment B, that constitute evidence of, the fruits of, or instrumentalities of violations of 18 USC §§ 1344, 1349, 1014, and 1957.

### **III. ADDITIONAL INFORMATION IN SUPPORT OF THE SEARCH OF THE SUBJECT LOCATION**

10. The Subject Location is the Second Floor of 144 Kings Hwy. S.W., Dover, DE 19901.

11. On October 4, 2012, your affiant and others executed a search warrant on the offices of BBC ROBERTIES, located on the Third Floor of 144 Kings Hwy. S.W., Dover, DE. 19901. This search warrant was approved by the Court under Case No. 12-163M.

12. Also on October 4, 2012, multiple agents conducted interviews with several witnesses, including SAL LEONE and MICHELE WYATT.

13. WYATT was present at the third floor offices of BBC PROPERTIES during the search. During her encounter with the agents, WYATT identified a storage area on the second floor of the property that contained items relating to BBC PROPERTIES. WYATT voluntarily provided agents with the keys to two locked rooms on the second floor, a conference room and an empty office. Agents entered and observed the location and witnessed in one room a box containing numerous floppy disks; a small binder labeled "floppy disk," which contained a number of floppy disks; and a number of architectural blueprints.

14. In addition, also on October 4, 2012, agents conducted a consensual interview with LEONE inside his residence. During the interview, LEONE confirmed that he worked as a project manager on multiple ZIMMERMAN development projects, including projects that were financed by WILMINGTON TRUST. He estimated that he worked on 5-6 such development projects with ZIMMERMAN over the past six to eight years. On some projects, LEONE acted solely as a project manager, while on others he was both a partner and a project manager. LEONE could not recall which particular projects were completed, or not. LEONE stated that, as a project manager, he generally earned 8% of the project's cost, plus expenses.

15. LEONE told the agents that he was the project manager for the SALT POND development project. Facts relating to the SALT POND project are set forth in Attachment C, paragraphs 43-57. LEONE stated that he was responsible for all construction work, from initiation to completion. In that role, LEONE submitted draw requests on behalf of the project to WILMINGTON TRUST for the bank to release funds for the project. LEONE also indicated that he was familiar with contractor invoices and receipts relating to the projects, but that neither he nor LAST CALL paid the contractors. LEONE stated that ZIMMERMAN's bookkeeper [Michelle WYATT] paid the bills. ATTACHMENT C contains several specific examples of situations in which there is probable cause that fraudulent construction draws were submitted to WILMINGTON TRUST. See Attachment C, paragraphs 58-67.

16. LEONE indicated that, for the SALT POND project, he was paid at one of his two business entities: LAST CALL and SEA VIEW BUILDERS (hereinafter "SEA VIEW").

17. LEONE also acknowledged that he was a partner in the SHOPPES AT FIELDSTONE development project. Facts relating to the SHOPPES AT FIELDSTONE project are set forth in Attachment C, paragraphs 68-78. LEONE stated that he was “small potatoes” in terms of his partnership investment. LEONE indicated that he and ZIMMERMAN each owned 25% of the project, and that an investment group from Baltimore (the name of which he could not recall) owned the additional 50% interest.

18. LEONE acknowledged that, for the SHOPPES AT FIELDSTONE project, he likely submitted personal and business financial statements and signed personal and business guaranties and other documents relating to the loan application(s). LEONE claimed he believed he had a “sizable net gain.” LEONE stated he was unaware how he realized gains on the project, and that his accountant had to explain it to him. As set forth in Attachment C, however, there is probable cause that LEONE and ZIMMERMAN submitted a draw request for engineering and architecture expenses, which they were supposed to fund in accordance with the project. See Attachment C, paragraphs 69-70. In addition, an FBI Agent who reviewed the project determined that approximately \$147,000.00 in funds were provided to ZIMMERMAN, LEONE, and various entities controlled by each. See Attachment C, paragraph 73. Specifically, LEONE received a payment from the SHOPPES AT FIELDSTONE account in the amount of \$50,000.00 on May 21, 2008. As set forth in Attachment C, the project did not provide for an equity takeout.

19. Moreover, as set forth in Attachment C, paragraphs 74-75, on February 27, 2009, the SHOPPES AT FIELDSTONE project received a rent payment in the amount of \$262,000.00. On March 3, 2009, LEONE and ZIMMERMAN both received a check in the amount of \$130,000.00 from the SHOPPES AT FIELDSTONE account. A letter from ZIMMERMAN dated January 2, 2008, had suggested that, when received, the \$262,000.00 payment would be used to pay contractors.

20A. LEONE stated that COMPASS POINTE was another development project with ZIMMERMAN, and that he acted as a project manager on that project. Facts relating to COMPASS POINTE are set forth in Attachment C, paragraphs 89-95.

20B. Your affiant is aware that other agents have reviewed records provided by a third-party relating that WILMINGTON TRUST granted SILVER BULLITT, LLC. at least one loan in the amount of \$1.89 Million on March 26, 2008. In addition, your affiant is aware of another email provided by a third party in which a WILMINGTON TRUST employee wrote that "Sal's projects include Moore's Lake, East Side & Silver Bullit approximately \$4,672,000." The WILMINGTON TRUST employee, B1, further recommending downgrading the Bank's relationship with LEONE, stating based upon cost overruns on a small project that he found "troubling." Your affiant is further aware that agents have determined from emails provided by third parties that LEONE's email address is sjl77@hotmail.com.

21. LEONE stated that he currently has an office located at 379 Wal-Mart Dr., Camden, DE, 19934, which is the subject of a separate search warrant application. LEONE stated that he has worked out of that location since July 2009. Prior to working at his current location, LEONE worked out of either: (1) the second floor of 144 Kings Hwy SW, Dover, DE, 19901, the Subject Location; or (2) his residence.

#### **VIII. SUBJECT LOCATION - 144 KINGS HIGHWAY SW, DOVER, DELAWARE (SECOND FLOOR)**

22. On September 10, 2012, an FBI agent reviewed mailings made to 144 Kings Hwy. S.W., Dover, DE, 19901, for the time period June 10, 2012 through July 8, 2102. This review indicated that the following entities, among other individuals and entities, received mail at the Subject Location: MICHAEL ZIMMERMAN, SALVATORE LEONE, BBC PROPERTIES, INC., COMPASS POINTE, LLC and SALT POND PLAZA, LLC.

23. During the course of the investigation, agents reviewed numerous documents, including bank statements, contractor invoices, loan draw requests and construction loan agreements which



indicated that BBC and various ZIMMERMAN-related entities used the general address of 144 Kings Hwy. S.W., Dover, DE, 19901 as their mailing address.

24. A review of BBC's website, [www.bbcpropertiesinc.com](http://www.bbcpropertiesinc.com) on October 2, 2012, revealed that BBC lists its contact address as 144 Kings Highway, S.W., Dover, Delaware 19901.

25. On several occasions over the course of July 2012 through September 2012, an FBI Agent conducted surveillance at the Subject Location and observed ZIMMERMAN's vehicle, a 2007 Range Rover, black in color, bearing a Delaware license plate parked adjacent to the Subject Location. A check of the Delaware Division of Motor Vehicle records revealed that the license plate was registered to an entity associated with ZIMMERMAN. The FBI Agent also, on several occasions, surveilled ZIMMERMAN driving said vehicle to/from the Subject Location.

26. On August 31, 2012 an FBI Agent made contact with an employee of the "Governor's Café," a business establishment located on the ground floor of the Subject Location. Said employee advised that ZIMMERMAN maintains a private office located on the third floor of the Subject Location and that the second floor of the Subject Location is vacant. Information provided on October 4, 2012, by WYATT and LEONE, however, indicates that documents and records are in fact located on the second floor.

## **IX. SCOPE OF SEARCH**

### **A. General**

27. Based upon this investigation and my training and experience, I believe that ZIMMERMAN is currently has business-related documents at the Subject Location.

28. Based on my training and experience and the training and experience of other investigators assigned to this case, I know that it is common for individuals and businesses involved in financial crimes to maintain financial and business documents and records, including in electronic and hard copy form, relating to their business affairs. These documents and records are routinely retained for long periods of time in secure and accessible locations, such as

business offices, for tax and other business purposes. These documents and records will show the acquisition, conversion, movement, secretion, transfer and distribution of currency, real property, business property.

29. Based on my training and experience, the training and experience of other investigators assigned to this case and the facts described above, there is probable cause to believe that there will be records, documents, and/or electronic data created on and stored at the Subject Location, as further described in Attachment B, that constitutes evidence of, the fruits of, or instrumentalities of violations of 18 U.S.C. §§ 1344, 1349, 1014, and 1957.

30. The records or documents created and retained by individuals in financial crimes also often include electronic correspondence; U.S. Postal Service and/or next day carrier services documents and receipts; investor records; contracts; loan documents, photographs; appointment books; airline and other travel tickets and receipts; bank account records; and other financial instruments.

31. Individuals and businesses involved in financial crimes create such documents, records and information by various means, including but not limited to, computers, printers, facsimile machines, and telephones, telephone answering machines, cellular telephones and cameras. These individuals and businesses also maintain such documents, records and information in various forms including but not limited to, electronic, magnetic, photographic and tangible.

32. Your Affiant has reviewed numerous documents provided by third parties which show that ZIMMERMAN communicated frequently with WILMINGTON TRUST, ONIX Z and other individuals and entities regarding ZIMMERMAN related projects using the e-mail account [bbcprop@aol.com](mailto:bbcprop@aol.com).

33. In addition, your Affiant has reviewed numerous documents indicating that ZIMMERMAN's administrative assistant, MICHELE WYATT, communicated frequently with

WILMINGTON TRUST and other individuals and entities regarding ZIMMERMAN related projects using the e-mail account wyattmichele@comcast.net.

**B. Computer, Electronic Storage and Forensic Analysis**

34. As described above and in Attachment B, this application seeks permission to search for records that might be found on the Subject Location, in whatever form they are found. One form in which the records might be found is data stored on a computer's hard drive or other storage media. Thus, the warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Federal Rule of Criminal Procedure 41(e)(2)(B).

35. *Probable cause.* I submit that if a computer or storage medium is found on the Subject Location, there is probable cause to believe those records will be stored on that computer or storage medium, for at least the following reasons:

- a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.
- b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.
- c. Wholly apart from user-generated files, computer storage media—in particular, computers' internal hard drives—contain electronic evidence of how a computer

has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory “swap” or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

- d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.”
- e. Based on actual inspection of other evidence related to this investigation, I am aware that computer equipment was used to generate, store, and print documents and e-mails used in the fraud scheme. There is reason to believe that there is a computer system currently located on the Subject Location.

35. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only computer files that might serve as direct evidence of the crimes described on the warrant, but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any storage medium in the Subject Location because:

- a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file

systems can record information about the dates files were created and the sequence in which they were created, although this information can later be falsified.

- b. Forensic evidence on a computer or storage medium can also indicate who has used or controlled the computer or storage medium. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, e-mail, e-mail address books, “chat,” instant messaging logs, photographs, the presence or absence of malware, and correspondence (and the data associated with the foregoing, such as file creation and last-accessed dates) may be evidence of who used or controlled the computer or storage medium at a relevant time.
- c. A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions about how computers were used, the purpose of their use, who used them, and when.
- d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, computer evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.
- e. Further, in finding evidence of how a computer was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium. For example, the presence or absence

of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user's intent.

36. *Necessity of seizing or copying entire computers or storage media.* In most cases, a thorough search of a Subject Location for information that might be stored on storage media often requires the seizure of the physical storage media and later off-site review consistent with the warrant. In lieu of removing storage media from the Subject Location, it is sometimes possible to make an image copy of storage media. Generally speaking, imaging is the taking of a complete electronic picture of the computer's data, including all hidden sectors and deleted files. Either seizure or imaging is often necessary to ensure the accuracy and completeness of data recorded on the storage media, and to prevent the loss of the data either from accidental or intentional destruction. This is true because of the following:

- a. The time required for an examination. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing evidence of how a computer has been used, what it has been used for, and who has used it requires considerable time, and taking that much time on Subject Location could be unreasonable. As explained above, because the warrant calls for forensic electronic evidence, it is exceedingly likely that it will be necessary to thoroughly examine storage media to obtain evidence. Storage media can store a large volume of information. Reviewing that information for things described in the warrant can take weeks or months, depending on the volume of data stored, and would be impractical and invasive to attempt on-site.
- b. Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software, and configurations. Therefore, searching them sometimes requires tools or knowledge that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on the Subject Location. However, taking the storage media off-site and reviewing it in a

controlled environment will allow its examination with the proper tools and knowledge.

- c. Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off-site reviewing with specialized forensic tools.

37. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit seizing, imaging, or otherwise copying storage media that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the media or information consistent with the warrant. The later review may require techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of a hard drive to human inspection in order to determine whether it is evidence described by the warrant.

38. **BBC Properties, Inc.** (“BBC”) is a functioning company that conducts legitimate business. The seizure of BBC’s computers may limit BBC’s ability to conduct its legitimate business. As with any search warrant, I expect that this warrant will be executed reasonably. Reasonable execution will likely involve conducting an investigation on the scene of what computers, or storage media, must be seized or copied, and what computers or storage media need not be seized or copied. Where appropriate, agents will copy data, rather than physically seize computers, to reduce the extent of disruption. If employees of BBC so request, the agents will, to the extent practicable, attempt to provide the employees with copies of data that may be necessary or important to the continuing function of BBC’s legitimate business. If, after inspecting the computers, it is determined that some or all of this equipment is no longer necessary to retrieve and preserve the evidence, the government will return it.

## **X. CONCLUSION**

39. I respectfully, request that the Court issue an order pursuant to which the Affidavit and all papers submitted in support of this application be filed under seal. The evidence to be seized and the information upon which the application is based are relevant to an ongoing investigation and premature disclosure of the Affidavit and related documents may have a negative impact on this investigation and jeopardize its effectiveness.

40. Based on the facts set forth above, your Affiant respectfully submits that there is probable cause to believe that there is presently contained within the property set forth in Attachment A, files correspondence, memoranda, computers, storage medium, loan documents, bank and other financial records and other materials as more particularly described in Attachment B, that constitute evidence of, the fruits of, or instrumentalities of violations of 18 U.S.C. §§ 1344, 1349, 1014, and 1957. Your Affiant respectfully requests that a search warrant be issued for the premises referenced in Attachment A of this Affidavit.

Respectfully submitted,

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Kevin P. Shannon  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me on \_\_\_\_\_, 2012

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HONORABLE MARY PAT THYNGE  
UNITED STATES MAGISTRATE JUDGE



**ATTACHMENT A**  
***Property to be Searched***

The Subject Location is located on the second floor of 144 Kings Highway SW, Dover, Delaware. The Subject Location is a three-story, red-brick building with light tan trim located near Delaware's State Legislative Hall district in the downtown Dover, Delaware area. There exists a porch located on the front of the building and affixed near the roof section of the porch above the front door to the building are the numbers "144." Located on a portion of the roof above the third floor is a round green sign with the letter "Z", yellow in color, in the center. The building sits on a tri-angular piece of property on the corner of Kings Highway Southwest and American Avenue. The following is a photograph of the Subject Location.



**ATTACHMENT B**

***Property to be Seized***

The items to be seized from the location described in Attachment A (the Subject Property) constitute evidence, fruits or instrumentalities of violations of Bank Fraud (18 U.S.C. § 1344), Conspiracy to Commit Bank Fraud (18 U.S.C. § 1349), the Making of False Statements to a Financial Institution (18 U.S.C. § 1014), and Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity (18 U.S.C. § 1957) and/or property designed or intended for use or which is or has been used as the means of committing these violations, including but not limited to the following:

1. All records relating to violations of Bank Fraud (18 U.S.C. § 1344), Conspiracy to Commit Bank Fraud (18 U.S.C. § 1349), the Making of False Statements to a Financial Institution (18 U.S.C. § 1014), and Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity (18 U.S.C. § 1957), including but not limited to those violations involving MICHAEL ZIMMERMAN and the ZIMMERMAN-RELATED ENTITIES, as set forth in the attached affidavit, including:

- a. Records and information relating to the Zimmerman-related entities, as set forth in the attached affidavit and incorporated herein;
- b. Records and information relating to the e-mail accounts bbcprop@aol.com and wyattmichele@comcast.net;
- c. Records and information relating to any and all financial dealings between Michael Zimmerman the Zimmerman-related entities, and/or his employees and

agents, and Wilmington Trust Corp. Wilmington Trust Co. and/or its employees and agents.

- d. Records and information relating to all correspondence between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents with Wilmington Trust Corp., Wilmington Trust Co. and/or its employees and agents.
- e. Records and information relating to any and all financial dealings between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents with The Onix Group, OnixZ, LLC, and/or its employees and agents.
- f. Records and information relating to all correspondence between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents with The Onix Group, OnixZ, LLC, and/or its employees and agents.
- g. Records and information relating to any and all financial dealings between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents, and partners of the Zimmerman-related entities, including but not limited to:
  - i. Salvatore J. Leone
  - ii. Last Call Investments, Inc.
  - iii. Silver Bullitt [Inc. or LLC.]

- iv. Ralph J. Larson
- v. Alan Levin
- vi. Kevin Barrett
- vii. Constantine F. Malmberg, III
- viii. Kenneth J. Young
- ix. Stephen S. Silver
- x. Banana Wind Properties, LLC
- xi. Charles C. Rodriguez
- xii. L. Bruce Neandross
- xiii. Phillip J. McGinnis
- xiv. TBC Enterprises, LLC
- xv. Chestertown I, LLC
- xvi. Sea View Builders [Inc. or LLC.]

- h. Records and information relating to all correspondence between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents, and partners of the Zimmerman-related entities.

- i. Records and information demonstrating indicia of occupancy, ownership, or use of the Subject Property, including but not limited to, utility and telephone bills; canceled envelopes; rental, purchase, or lease agreements; identification documents; and keys.
  - j. Records and information relating to the travel of Michael Zimmerman.
  - k. Records and information relating to the incorporation, formation, and/or operation of the Zimmerman-related entities.
  - l. Records and information containing contact and appointment information relating to individuals involved with the Zimmerman-related entities, including but not limited to employees and/or agents of BBC, the Zimmerman-related entities, Wilmington Trust Corp., Wilmington Trust Co., The Onix Group, and OnixZ, LLC.
2. For any computer or storage medium whose seizure is otherwise authorized by this warrant, and any computer or storage medium that contains or in which is stored records or information that is otherwise called for by this warrant (hereinafter, "COMPUTER"):
- a. evidence of who used, owned, or controlled the COMPUTER at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, user profiles, email, email contacts, "chat," instant messaging logs, photographs, and correspondence;

- b. evidence of software that would allow others to control the COMPUTER, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;
- c. evidence of the lack of such malicious software;
- d. evidence of the attachment to the COMPUTER of other storage devices or similar containers for electronic evidence;
- e. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the COMPUTER;
- f. evidence of the times the COMPUTER was used;
- g. passwords, encryption keys, and other access devices that may be necessary to access the COMPUTER;
- h. documentation and manuals that may be necessary to access the COMPUTER or to conduct a forensic examination of the COMPUTER;
- i. records of or information about Internet Protocol addresses used by the COMPUTER;
- j. records of or information about the COMPUTER's Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked" or "favorite"

web pages, search terms that the user entered into any Internet search engine, and records of user-typed web addresses;

- k. contextual information necessary to understand the evidence described in this attachment.

3. Routers, modems, and network equipment used to connect computers to the Internet.

As used above, the terms “records” and “information” includes all forms of creation or storage, including any form of computer or electronic storage (such as hard disks or other media that can store data); any handmade form (such as writing); any mechanical form (such as printing or typing); and any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, or photocopies).

The term “computer” includes all types of electronic, magnetic, optical, electrochemical, or other high speed data processing devices performing logical, arithmetic, or storage functions, including desktop computers, notebook computers, mobile phones, tablets, server computers, copiers, scanners, fax machines, printers, and network hardware.

The term “storage medium” includes any physical object upon which computer data can be recorded. Examples include hard disks, RAM, floppy disks, flash memory, CD-ROMs, and other magnetic or optical media.

# Attachment C



**AFFIDAVIT IN SUPPORT OF A SEARCH WARRANT**

I, Greg S. Mrozek ("Affiant") being duly sworn and state as follows:

**I. PRELIMINARY INFORMATION**

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed since January 2002. As a Special Agent with the FBI, I am authorized to investigate violations of the laws of the United States and to execute search warrants issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure. I am currently assigned to the criminal investigative squad of the FBI's Wilmington, Delaware Resident Agency, Baltimore Division. I have been trained in investigating white collar crime matters and have experience in cases relating to various types of fraud and other criminal activity, including bank fraud, mortgage fraud, complex financial crimes, election fraud and public corruption. In my experience as a Special Agent with the FBI, I have prepared, assisted and/or participated in the execution of numerous search warrants.

2. This Affidavit is written in support of an application for a warrant to search the offices located in the District of Delaware at 144 Kings Highway S.W., Dover, Delaware, 19901, as more particularly described in Attachment A (the "Subject Location") and to seize documents, computers and other evidence of criminal conduct engaged in by MICHAEL A. ZIMMERMAN (hereinafter referred to as "ZIMMERMAN") and his various business entities, as more particularly described in Attachment B.

3. The information contained in this Affidavit is based, in part, upon personal knowledge arising from my participation in this investigation; upon information provided to me by other law enforcement officers and government officials jointly participating in this investigation; and upon information provided by witnesses and review of various documents and records which were provided voluntarily, are publicly available and/or have been obtained pursuant to subpoena. This Affidavit is being submitted for the limited purpose of securing a search warrant, and, as a result, I have not included each and every fact known concerning this investigation. I have set forth only the facts which I believe are necessary to establish probable cause for the

issuance of the requested search warrant. Where the statement of others or the contents of documents and records are related herein, they are related in substance and in part, and not verbatim. Similarly, all assertions concerning dates, numbers and dollar amounts are approximate, based upon information and evidence gathered to date.

4. The FBI, along with several other federal law enforcement agencies, is conducting an investigation of a bank fraud scheme and conspiracy to commit bank fraud engaged in by ZIMMERMAN and others, including business partners and at least one former employee of WILMINGTON TRUST COMPANY ("WILMINGTON TRUST"). As set forth in detail below, there is probable cause that ZIMMERMAN and others provided false and fraudulent documentation in order to draw funds from loans obtained from WILMINGTON TRUST for various real estate development projects and, at times, misappropriated those loan proceeds for purposes totally unrelated to the original loans. In addition, there is probable cause that ZIMMERMAN, along with his business partners, devised a plan to purchase, at a significant discount from WILMINGTON TRUST, several of ZIMMERMAN's failing loans through a related third party and withheld relevant information from WILMINGTON TRUST as part of the process.

5. The federal bank fraud statutes which criminalize schemes such as obtaining loan funds through false representations and the unauthorized use of loan proceeds, as well as engaging in monetary transactions in property derived from specified unlawful activity, are as follows:

**Title 18, United States Code, § 1344 (Bank Fraud):** Whoever knowingly executes or attempts to execute, a scheme or artifice to defraud a financial institution; or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

**Title 18, United States Code, § 1349 (Conspiracy to Commit Bank Fraud):** Any person who attempts or conspires to commit any offense related to various fraud offenses shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**Title 18, United States Code, § 1014 (False Statement to a Financial Institution):**

Whoever knowingly makes any false statement or report or willfully overvalues any land, property or security for the purpose of influencing in any way the action of any institution the accounts of which are insured by the Federal Deposit Insurance Corporation upon the application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan or any change or extension of the same, by renewal, deferment of action or otherwise shall be fined not more than \$1,000,000.00 or imprisoned not more than 30 years, or both.

**Title 18, United States Code, § 1957 (Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity):**

Whoever . . . knowingly engages or attempts to engage in a monetary transaction in criminally derived property in a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished [as provided under the statute].

6. Based upon the investigation to date conducted by your Affiant and other federal law enforcement agents, there is probable cause to believe that MICHAEL A. ZIMMERMAN has committed bank fraud, in violation of 18 U.S.C. § 1344; committed conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349; provided material false statements to a financial institution, in violation of 18 U.S.C. § 1014; and engaged in monetary transactions in property derived from specified unlawful activity, in violation of 18 U.S.C. § 1957. Furthermore, there is probable cause to believe that ZIMMERMAN has been engaged in this fraud from his business offices located on the third floor of 144 Kings Highway S.W., Dover, Delaware, 19901, the Subject Location.

7. Based upon the facts and circumstances described in this Affidavit, I respectfully submit that there is probable cause to believe that there is presently contained within the Subject Location, records, files, correspondence, memoranda, computers, storage medium, bank and other financial records, data and other materials more specifically described in Attachment B, that constitute evidence of, the fruits of, or instrumentalities of violations of 18 U.S.C. §§ 1344, 1349, 1014, and 1957.

## **II. RELEVANT ENTITIES AND INDIVIDUALS**

### **A. BACKGROUND OF THE ZIMMERMAN-RELATED ENTITIES**

8. MICHAEL A. ZIMMERMAN is a real estate developer and businessman who maintains a

headquarters office located in Dover, Delaware. ZIMMERMAN's business ventures and real estate development projects, which consist of commercial and residential development, commercial leasing, residential rentals, and marina development and operations are physically located in central and southern Delaware, Maryland, Florida, and the Bahamas. ZIMMERMAN had worked for four real estate developers for 17 years in the areas of sales, management, marketing and financing. In 1996, ZIMMERMAN formed his own development company, BBC PROPERTIES, INC, (hereinafter referred to as "BBC PROPERTIES" or "BBC") to facilitate acquisitions and the development of commercial real estate.

9. BBC is the primary entity through which ZIMMERMAN conducts his business operations. A review of BBC's website at [www.bbcpropertiesinc.com](http://www.bbcpropertiesinc.com) on October 2, 2012, indicated that BBC's physical address is 144 Kings Highway S.W., Dover, Delaware 19901, the Subject Location. The address listed on bank account statements from multiple financial institutions with which BBC maintains accounts is also the Subject Location.

10. BBC's website reports that ZIMMERMAN is the president of BBC. The value of BBC's average yearly project development is \$100 million. BBC's website states that "BBC Properties, Inc. has established a reputation on the Eastern shore as a development company that can make a deal happen through re-zoning, site plan approval, permitting and construction."

11. ZIMMERMAN also established several limited liability companies ("LLCs") and partnerships for each of his real estate development projects. These LLCs include, among others:

- SALT POND PLAZA, LLC (hereinafter referred to as "SALT POND"),
- COLLEGIAN PLAZA HOSPITALITY II, LLC (hereinafter referred to as "COLLEGIAN PLAZA"),
- SHOPPES AT FIELDSTONE, LLC (hereinafter referred to as "SHOPPES AT FIELDSTONE"), and
- COMPASS POINTE, LLC (hereinafter referred to as "COMPASS POINTE").

12. In some instances, ZIMMERMAN was 100% owner of the LLCs. In other cases, ZIMMERMAN had investment partners, such as SALVATORE LEONE (hereinafter referred to as "LEONE") and others listed in paragraph 14. For several of the projects, LEONE acted as ZIMMERMAN's general contractor through LEONE's company LAST CALL INVESTMENTS, INC. (hereinafter referred to as "LAST CALL").

13. Additional ZIMMERMAN related entities (hereafter referred to as the "ZIMMERMAN related entities") which ultimately experienced loss and which were sold to a third party (as set forth in detail below) consist of the following:

- Happy Gas, LLC
- Mini-Mi, LLC
- Z Man Properties, LLC
- Chester Village, LLC
- Yozima, LLC
- Old Customs House, LLC
- North Dover 40, LLC
- North Dover 20, LLC
- Woodside Park Center IV & V, LLC
- Zim Hotel, LLC
- CR Plaza, LLC
- CR Plaza II, LLC
- Gateway South Professional Center
- Hartly Town Center, LLC
- Seaford 36, LLC
- Data Center, LLC
- South Smyrna Developers, LLC

14. According to documents provided by WILMINGTON TRUST, partners of the ZIMMERMAN related entities included, but were not limited to the following individuals and entities:

- Salvatore J. Leone
- Last Call Investments, Inc.
- Alan Levin
- Ralph J. Larson
- Kevin Barrett
- Constantine F. Malmberg, III
- Kenneth J. Young
- Stephen S. Silver
- Banana Wind Properties, LLC
- Charles C. Rodriguez
- L. Bruce Neandross
- Phillip J. McGinnis
- TBC Enterprises, LLC
- Chestertown I, LLC

15. A review of various official business documents including bank statements and WILMINGTON TRUST loan documents revealed that the Subject Location was used as the official address for many of the LLCs. Additionally, it was determined that several of the LLCs, including SALT POND and COMPASS POINTE, maintained separate bank accounts through which financial transactions were made. Other LLCs conducted their financial transactions through BBC's TD Bank account and other bank accounts. ZIMMERMAN obtained loans to finance numerous real estate development projects represented by these LLCs from various financial institutions, including WILMINGTON TRUST.

#### **B. BACKGROUND OF WILMINGTON TRUST**

16. WILMINGTON TRUST CORPORATION ("WILMINGTON TRUST CORP.") was a financial holding company headquartered in Wilmington, Delaware consisting of three core

businesses: regional banking, corporate client services and wealth advisory services.

WILMINGTON TRUST CORP. was founded by the DuPont family in 1903. WILMINGTON TRUST COMPANY ("WILMINGTON TRUST"), WILMINGTON TRUST CORP.'s principal subsidiary, is a Delaware chartered bank and trust company which is insured by the Federal Deposit Insurance Corporation ("FDIC") and regulated by the Federal Reserve Board and the Delaware Department of Banking. WILMINGTON TRUST engaged in all types of customary banking activities, including the granting of various types of commercial and retail loans.

17. WILMINGTON TRUST serviced consumer banking clients in the State of Delaware and commercial banking clients throughout the Mid-Atlantic region of the United States, with a large concentration of clients in Delaware. WILMINGTON TRUST's commercial loan portfolio was broken down into four segments: commercial, financial and agricultural ("CFA"); commercial real estate-construction ("CRE"); commercial mortgage-owner occupied; and commercial mortgage-non-owner occupied. From 2006 through 2010, WILMINGTON TRUST's total commercial loan balance made up between 68% and 75%, or \$5.5 billion to \$6.7 billion, of WILMINGTON TRUST's total loan portfolio, with over 50% of the loans being Delaware-related. Over that same time period, WILMINGTON TRUST's commercial real estate-construction loan balances ranged from \$1.4 billion to \$1.9 billion, with a significant percentage of the loans being granted to real estate developers, including ZIMMERMAN, toward projects geographically located in Delaware.

18. On approximately December 12, 2008, WILMINGTON TRUST CORP. received about \$330 million from the United States Government, through the Department of Treasury's Troubled Asset Relief Program (TARP). TARP was created by the Emergency Economic Stabilization Act of 2008 and was designed to restore liquidity and stability to the financial system in the wake of the financial crisis. However, from 2008 to 2010, WILMINGTON TRUST's financial condition deteriorated primarily due to the failure of many of WILMINGTON TRUST's commercial real estate-construction loans. The failure of many of the loans in WILMINGTON TRUST's commercial real estate-construction loan portfolio was so severe that WILMINGTON TRUST was required to charge-off, or take a loss to income,

hundreds of millions of dollars of its commercial real estate-construction loans. For example, in 2010, WILMINGTON TRUST recorded a \$296.1 million charge off associated with its commercial real estate-construction loans.

19. WILMINGTON TRUST's deteriorating financial condition made a significant negative impact on the overall operations of WILMINGTON TRUST CORP., to the extent that WILMINGTON TRUST CORP.'s stock price declined dramatically. WILMINGTON TRUST CORP'S stock price declined from a high in 2008 of \$46.75 to a low of \$3.88 in 2010. Consequently, WILMINGTON TRUST CORP's Board of Directors ("BOD") decided to enter into a definitive merger agreement with M&T Bank Corporation ("M&T Bank") which was announced on November 1, 2010. Pursuant to the agreement, M&T Bank acquired WILMINGTON TRUST CORP. for the price of \$357 million, or \$3.74 per share – a share price lower than what WILMINGTON TRUST CORP. had been trading for the previous day. The merger of WILMINGTON TRUST CORP. and M&T Bank was completed on May 16, 2011.

20. The WILMINGTON TRUST loan committee consisted of several senior management officials from the lending and credit departments who met periodically to evaluate and approve loan requests over certain dollar amounts. All of the initial loans for the ZIMMERMAN development projects discussed in this Affidavit (but not necessarily supplemental loan requests) were reviewed and approved by the loan committee.

21. A Bank Employee (hereinafter referred to as "B1") was employed by WILMINGTON TRUST as a Relationship Manager in the Commercial Real Estate Group from approximately 2004 through 2010. B1 was responsible for managing the ZIMMERMAN relationship with WILMINGTON TRUST through approximately November 2008. B1 was known to have a close relationship with ZIMMERMAN and originated many of the loans that WILMINGTON TRUST granted to ZIMMERMAN for his various development projects, including SALT POND, COLLEGIAN PLAZA, SHOPPES AT FIELDSTONE, and COMPASS POINTE.



22. Witness #1 (hereinafter referred to as "W1") was employed by WILMINGTON TRUST in its Loan Recovery Group from April 2009 through August 2011. Consistent with the primary purpose of the Loan Recovery Group, also known as the Workout Group, W1 was responsible for maximizing WILMINGTON TRUST's financial recovery relative to the many failed or failing loans of ZIMMERMAN and other developers. The work out of the ZIMMERMAN loan portfolio was the first assignment given to W1.

23. Witness #2 (hereinafter referred to as "W2") was employed by WILMINGTON TRUST as its Chief Credit Officer (hereinafter referred to as "CCO") from in or around 2004 through September 2010. W2 was responsible for overseeing WILMINGTON TRUST's credit practices and lending policies and had some familiarity with ZIMMERMAN's loans.

24. Witness #3 (hereinafter referred to as "W3") was employed by WILMINGTON TRUST as Real Estate Credit Officer beginning in 2007 and later became CCO after W2 left WILMINGTON TRUST. W3 was also familiar with the various issues involving ZIMMERMAN's loans.

25. Witness #4 (hereinafter referred to as "W4") was employed by WILMINGTON TRUST and managed its Loan Recovery Group for approximately 16 years. W4 was in charge of the Loan Recovery Group during 2009 when the ZIMMERMAN loans were being managed through the loan work-out process.

### **III. WILMINGTON TRUST's LENDING RELATIONSHIP WITH ZIMMERMAN**

26. ZIMMERMAN first began conducting business with WILMINGTON TRUST in 1999 through his business relationship with AHRS, LLC, a real estate development business headed by the senior management team of Delaware-based Happy Harry's drug stores. ZIMMERMAN was an active developer outside of his contacts with AHRS, LLC and over the years had borrowed tens of millions of dollars from WILMINGTON TRUST to help fund his various real estate development projects. As of March 31, 2010, WILMINGTON TRUST had approximately \$90.7 million in aggregate loan commitments to ZIMMERMAN. The total ZIMMERMAN

relationship consisted of over 30 different development projects, some of which were listed above, and was in excess of 75 loans.

**A. SECURITY AGREEMENTS AND GLOBAL FORBEARANCE AGREEMENT**

27. Beginning around 2008 and into early-2009, ZIMMERMAN encountered significant difficulties in making payments on the various loans his LLCs had obtained from WILMINGTON TRUST. During the second quarter of 2009, several of the ZIMMERMAN projects were identified as having serious problems and were transferred to WILMINGTON TRUST's Loan Recovery Group. According to W1, many of ZIMMERMAN's loans were poorly managed, had weak administrative controls and were over budget. WILMINGTON TRUST and ZIMMERMAN entered into a Security Agreement on April 30, 2009, in which ZIMMERMAN granted to WILMINGTON TRUST a continuing lien on and security interest in his rights and interests in several income producing properties in which ZIMMERMAN had an ownership interest, including several shopping centers and apartment buildings.

28. Due to the continued poor financial condition of the aforementioned projects/loans, ZIMMERMAN entered into a Global Forbearance Agreement (hereafter referred to the "Forbearance Agreement") with WILMINGTON TRUST on September 18, 2009, along with an Amended and Restated Security Agreement. These agreements were effective until March 2011. The Forbearance Agreement pertained to 28 of ZIMMERMAN's development projects, many of which were funded by multiple loans. The total loan balance subject to the Forbearance Agreement was approximately \$77 million. The development projects of SALT POND, COLLEGIAN PLAZA, SHOPPES AT FIELDSTONE and COMPASS POINTE were included as part of the Forbearance Agreement.

29. The Forbearance Agreement included various conditions, among others, that the ZIMMERMAN projects subject to the agreement would be managed going forward by THE HANKIN GROUP, a professional building management company that specializes in managing troubled construction projects. THE HANKIN GROUP replaced ZIMMERMAN's general contractor and partner on certain projects, SALVATORE LEONE. Additionally, the

Forbearance Agreement stated that loan draws and contractor payments would be made directly to the projects' sub-contractors through THE HANKIN GROUP, and not through ZIMMERMAN or LEONE.

30. In order to effectively formulate a global workout strategy, WILMINGTON TRUST split the 28 projects and their related loans into four categories based upon WILMINGTON TRUST's strategy for salvaging the most value for each project. The Amended and Restated Security Agreement, which included several additional properties not included in the original Security Agreement, also required the establishment of a cash flow or cash collateral account which was to be funded from cash flows from performing properties. The funds in the cash collateral account were to be applied to any outstanding loans ZIMMERMAN maintained with WILMINGTON TRUST at the end of the Forbearance Agreement.

31. The financial deterioration of WILMINGTON TRUST's ZIMMERMAN portfolio, however, continued. As of March 31, 2010, WILMINGTON TRUST had incurred loan losses of \$29.2 million pertaining to the ZIMMERMAN loans.

#### **B. SALE OF ZIMMERMAN LOANS**

32. In November 2010, WILMINGTON TRUST decided to place the entire ZIMMERMAN portfolio of loans for sale. An offer of \$25 million was made by an entity called the SPECTRUM GROUP which prompted WILMINGTON TRUST to write off, as a financial loss, an additional \$12.5 million in ZIMMERMAN loans for the fourth quarter of 2010.

33. During the first quarter of 2011, the SPECTRUM GROUP walked away from the transaction and a second buyer, ONIX Z, LLC (hereafter referred to as "ONIX Z"), offered WILMINGTON TRUST \$20.4 million for the ZIMMERMAN loans. On March 30, 2011, ONIX Z purchased the ZIMMERMAN loans for \$20.4 million. The portfolio included 45 total loans representing approximately 21 separate development projects, including SALT POND, COLLEGIAN PLAZA, SHOPPES AT FIELDSTONE and COMPASS POINTE. As a result of

the sale, WILMINGTON TRUST wrote off, as a financial loss, an additional \$1.4 million in the first quarter of 2011.

#### **IV. WILMINGTON TRUST MANAGEMENT'S CONCERNS REGARDING THE ZIMMERMAN DRAWS**

34. As part of the investigation, agents conducted several interviews of WILMINGTON TRUST senior management personnel. These interviews provided insight into the ZIMMERMAN loan issues, as well as information concerning possible fraudulent activity related to these loans.

35. W1 advised that the COLLEGIAN PLAZA project basically consisted of an assemblage of land on a city block in Dover, Delaware. According to W1, no significant construction-related work had been completed and some of the required loan paperwork had not been completed, yet the loans were still approved and the funds dispersed. W1 added that the land associated with the project was not fully acquired. Furthermore, W1 stated that B1 approved numerous loans, which he never should have approved, including loan(s) to pay for the interest on the WILMINGTON TRUST loans made to COLLEGIAN PLAZA. Your Affiant reviewed COLLEGIAN PLAZA loan documentation and noted there was in fact a \$250,000.00 loan granted by WILMINGTON TRUST in November 2007 to pay for engineering costs and interest.

36. W1 advised that, with respect to the SALT POND project, referenced in detail below, a \$10 million loan was given to ZIMMERMAN, \$4 million of which was to be used to purchase the land and \$6 million of which was to be used to complete the needed site work. W1 advised that after the disbursement of the \$10 million, the only progress ZIMMERMAN was able to show on the project was a partially completed parking lot, and yet ZIMMERMAN had required additional funds to finish the site work. W1 suspected ZIMMERMAN was diverting WILMINGTON TRUST loan funds from SALT POND to other purposes when he compared the funds dispersed by WILMINGTON TRUST against the actual work completed, and the need for additional funds to complete the work required. W1 added that the loan draw requests made by LEONE, who was ZIMMERMAN's general contractor for SALT POND, never made any sense because the

related work was never completed. For example, several draw requests were made by LEONE for project build-outs, but the build-outs were not completed.

37. W2 advised he was told by ZIMMERMAN's Relationship Manager at WILMINGTON TRUST, B1, and another WILMINGTON TRUST official that they were comfortable extending certain loans to ZIMMERMAN because ZIMMERMAN was developing income-producing properties and he had several leases in hand with respect to those properties. W2 later learned that said leases never materialized and he speculated that there may have been possible fraud involved concerning the representation that leases were in hand when in reality the leases never existed. *See, e.g.*, paragraphs 49-57 below.

38. W3 also stated one of the problems WILMINGTON TRUST had with the ZIMMERMAN loans was that WILMINGTON TRUST operated under the impression that the shopping center projects in which ZIMMERMAN was involved had a large percentage of leases in place prior to construction, but in reality there were few such pre-construction leases. *See id.*

39. Shortly after W3 became WILMINGTON TRUST's Real Estate Credit Officer, W3 prepared a WILMINGTON TRUST Intra-Company Memorandum, dated March 12, 2010, "Subject: Delaware Commercial Real Estate Division Concern" (the "Memorandum"). The Memorandum was prepared as a result of findings from WILMINGTON TRUST's comprehensive Delaware Commercial Real Estate Division Project Status Review, which revealed serious concerns with the past management of the Delaware Commercial Real Estate Division and with its loan portfolio. Some of the concerns cited in W3's Memorandum included the alleged unethical use of loan approval authority by relationship managers; the limited oversight of relationship managers within the division; and a limited technical knowledge of commercial real estate lending. Two questionable activities identified in the Memorandum, and for which W3 specifically singled out ZIMMERMAN loans as examples, included the lack of validation of construction budgets prior to loan closings and the frequent use of construction loan proceeds to return cash to borrowers or fund partner buyouts prior to construction completion or the property having reached operating stabilization. The Memorandum indicated that the most

obvious example of the aforementioned activities occurred in the ZIMMERMAN-related loans, including SALT POND and COMPASS POINTE, which required substantial additional funds to complete, and the SHOPPES AT FIELDSTONE, which provided funds for a partner buyout even before construction was initiated.

**V. REAL ESTATE DEVELOPMENT PROJECTS IN WHICH THERE IS PROBABLE CAUSE THAT ZIMMERMAN MISAPPROPRIATED LOAN FUNDS**

40. Based upon information developed from the witness interviews and other investigative steps, as well as the voluminous amount of documents associated with the various loans, investigators selected ZIMMERMAN projects and their related loan files for detailed analysis. The projects selected for detailed analysis included SALT POND, SHOPPES AT FIELDSTONE, COLLEGIAN PLAZA and COMPASS POINTE. At the time of the Forbearance Agreement, September 18, 2009, these projects represented approximately \$36.3 million, or 47%, of the total loan balance outstanding of \$77.4 million related to the ZIMMERMAN development projects. Therefore, since these projects represented over half of ZIMMERMAN's outstanding loan balance, it was determined these selected projects would likely provide a fair representation, or sampling, of the transactions related to the total population of the ZIMMERMAN projects and their loans. The analysis particularly focused on details surrounding the origination of the loans and the draw requests of loan funds, as well as the ultimate use of the loan proceeds.

41. When conducting this analysis, your Affiant discovered that for some projects, including SALT POND and COMPASS POINTE, ZIMMERMAN established separate bank accounts with which to manage the finances of those projects. For other projects, including COLLEGIAN PLAZA, ZIMMERMAN did not establish a separate bank account, but rather used a BBC TD Bank account (hereafter referred to as "BBC Operating Account") as an operating account to, among other things, manage receipts and disbursements of funds related to those projects and other business operations.

42. The results of the detailed analysis are set forth below.

**A. SALT POND**

43. A Wilmington Trust Intra-Company Memorandum sent from B1 to WILMINGTON TRUST's Loan Committee dated December 27, 2006, described the Salt Pond Plaza project as the planned development of a commercial center adjacent to the Salt Pond Community and Golf Course in Ocean View, DE. The body of the memorandum stated that ZIMMERMAN and his partner in the project, BARRETT, obtained county approval to develop a commercial center that would contain a grocery store, a smaller free-standing building, and a pad site, and that the entity was requesting a \$10 million dollar loan from WILMINGTON TRUST to acquire property and to complete site improvements. The memorandum indicated the loan proceeds would be used in the following manner:

Land Acquisition	\$4,400,000.00
<b>On- and Off-Site Improvements</b>	<b>\$2,000,000.00</b>
Engineering, Fees, Contingencies and Miscellaneous Closing Costs	\$1,350,000.00
Interest Reserve	\$1,250,000.00
<b>Equity Take Out</b>	<b>\$1,000,000.00</b>
<u>Total:</u>	\$10,000,000.00

44. As a general matter, an interest reserve account or loan, which is listed as a line item above, involves funds which are used to pay interest on the loan during the construction period. A construction loan with an interest reserve essentially uses borrowed funds to pay interest on the loan itself during the construction period. An interest reserve account allows a lender to periodically advance loan funds to pay interest charges on the outstanding balance of the loan.

45. The memorandum B1 submitted to the loan committee indicated that loan proceeds would be advanced for land acquisition and soft closing costs at settlement, and that site improvement funds would be advanced as work was completed. The memorandum further specified, in regards to the \$1,000,000 equity take-out, that the principals (ZIMMERMAN an 89% owner and BARRETT an 11% owner) would be permitted to draw down on the equity funds on a pro-rated basis as tenants begin paying rent for the three sites.

46. The “Construction Loan Agreement” dated January 10, 2007, made between WILMINGTON TRUST and SALT POND PLAZA, LLC was signed by ZIMMERMAN as Manager and by B1 on WILMINGTON TRUST’s behalf, as Vice President. The actual agreement however, differed from the loan budget presented to the Loan Committee two weeks prior. The following loan budget was included as Exhibit B of the signed Loan Agreement:

Land Acquisition	\$4,400,000.00
<b>On- and Off-Site Improvements</b>	<b>\$1,000,000.00</b>
Engineering, Fees, and Miscellaneous Closing Costs	\$1,200,000.00
Contingency	\$150,000.00
Interest Reserve	\$1,250,000.00
<b>Equity Take Out</b>	<b>\$2,000,000.00</b>
<b>TOTALS:</b>	<b>\$10,000,000.00</b>

47. As shown above, the Equity Take-Out line item increased by \$1 million and the On-and Off-Site Improvements line item decreased by the same amount.

48. The conditions dictating when the principals are entitled to receive payment of the equity take-out also changed. The Loan Agreement stipulated the equity take-out would be funded as follows:

“(i) \$1,000,000 shall be funded upon preliminary approval of the Record Development Plan for the Property by Sussex County and the final execution of the Harris Teeter lease;<sup>1</sup> (ii) \$600,000 upon execution of the lease for the 12,900 square foot retail pad site; and (iii) \$400,000 upon execution of a ground lease for the final (smaller) retail pad site.”

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<sup>1</sup> Harris Teeter, a grocery store chain based in North Carolina, was the anchor tenant for the project.



All files related to the SALT POND loan were requested from WILMINGTON TRUST. Agents found no documents indicating that WILMINGTON TRUST's Loan Committee had been informed of the change in terms to the agreement or change in the amount of the equity-take out.

**1. Equity-Take Out Draws Funds**

49. On May 21, 2007, WILMINGTON TRUST wired \$1 million in loan proceeds to the BBC Operating Account controlled by ZIMMERMAN. At that time, however, SALT POND had not yet entered into a lease with Harris Teeter. Thus, B1 caused WILMINGTON TRUST to fund \$1 million of the equity take-out prior to the execution of one of the conditions precedent (the execution of the Harris Teeter lease).

50. WILMINGTON TRUST's loan file for SALT POND included a May 16, 2007, e-mail from B1 to ZIMMERMAN. B1 wrote, "I went back through my notes and I saw executed lease and plan approval as the condition. However not wanting my reputation for reckless abandon to be in jeopardy, I guess we can fund the \$1,000,000."

51. WILMINGTON TRUST's loan file for SALT POND further included a May 21, 2007, e-mail from B1 to a WILMINGTON TRUST employee responsible for construction loan administration. B1 wrote, "Mike Z. has met the requirements for a \$1,000,000 equity advance on the Salt Pond project. I will forward to you wiring instructions for his account at Commerce (we are working to bring that account here). Let me know if you need anything else." The e-mail chain included notification from an engineering company that the project was unanimously approved by the county planning commission.

52. WILMINGTON TRUST's loan file also contained a copy of a lease between SALT POND and Harris Teeter which was dated June 27, 2007. Upon receiving notice that a lease had been signed, B1 wrote in a July 3, 2007 e-mail to ZIMMERMAN, "One less thing to worry about. Maybe I will get some sleep tonight." Your Affiant reviewed the lease signed with Harris Teeter and noted that it contained a clause indicating that the Tenant (Harris Teeter) was not obligated

to commence the payment of rent prior to the Landlord (SALT POND) obtaining executed leases for the two other retail pad sites.

53. On October 24, 2007, ZIMMERMAN sent B1 an e-mail containing the subject line "Salt Pond CVS." An unsigned and undated "Shopping Center Ground Lease" between Salt Pond Plaza LLC and CVS was attached to the e-mail. The e-mail stated: "this should be final lease for salt pond need my 1 m." B1 forwarded the email to a WILMINGTON TRUST employee in the construction loan administration, but no loan proceeds were advanced in response to this e-mail.

54. Also included in WILMINGTON TRUST's loan file was a fax dated January 11, 2008, that ZIMMERMAN sent to B1. The fax stated the following: "Send \$ \$1,000,000 ASAP I have to pay my bar tab." Attached to this fax was a letter from a realtor dated January 11, 2008, and addressed to Salt Pond Plaza c/o Mr. Michael Zimmerman 144 Kings Highway S.W., Dover DE 19901. The letter expressed Rite Aid's interest in a ground lease for the SALT POND property. The letter further stated that "Rite Aid shall have one hundred twenty (120) days from the date of this letter of intent (the "Examination Period") to (i) examine the suitability of the Premises for Rite Aid's intended use." ZIMMERMAN signed the last page of the letter as managing member of SALT POND to indicate his agreement to the terms in the letter. This letter is clearly a letter of intent only and not an executed ground lease for one of the remaining retail pad sites at SALT POND. As mentioned above, the Loan Agreement explicitly stated that executed ground leases for these pad sites are required for payment of the second half of the Equity Take-Out.

55. On January 16, 2008 WILMINGTON TRUST wired \$1 million in loan proceeds to SALT POND's TD Bank account. The supporting documentation identified B1 as authorizing the wire transfer. The following day, checks made payable to ZIMMERMAN in the amount of \$216,712.00 and to BBC in the amount of \$672,288.00 were issued on the SALT POND TD Bank account. A check in the amount of \$111,000.00 was also issued to BARRETT on the same day. The amount of the check corresponds to BARRETT's ownership percentage in the project. Based on the review of loan documents, correspondence, and the bank records mentioned above, there is probable cause that the principals of SALT POND – ZIMMERMAN

and BARRETT – drew \$2 million dollars in loan proceeds as an Equity Take-Out even though the signed Loan Agreement stipulated that the payment of the second \$1 million dollars was contingent on the execution of leases for the two smaller parcels intended for a drug store and bank, which did not occur at the time of the payment.

56. Your Affiant reviewed a letter dated April 7, 2009, sent to ZIMMERMAN from Harris Teeter's Vice President of Real Estate, indicating that Harris Teeter exercised its option to not pay its lease because SALT POND had failed to obtain leases for the two adjacent pad sites. Your Affiant reviewed another letter dated April 4, 2011, that Harris Teeter sent to ZIMMERMAN that reminded ZIMMERMAN that SALT POND remained in default of its lease, because it has failed to obtain executed leases for and to substantially construct the two smaller retail pad sites.

57. Thus, WILMINGTON TRUST paid ZIMMERMAN and BARRETT the full \$2 million Equity-Take Out amount, even though three years later, SALT POND still had not secured ground leases for the two smaller retail pad sites and Harris Teeter had not commenced paying rent for its site.

## **2. Construction Draws**

### **a. July 18, 2007 Draw Request**

58. On July 18, 2007 B1 received a faxed letter from BBC. In the letter, ZIMMERMAN requested a \$357,500.00 wire to the SALT POND account to pay for reimbursement of the following expenses:

½ Real Estate fee – Harris Teeter – Broker 1	\$75,000.00
½ Real Estate fee – Harris Teeter – Broker 2	\$37,500.00
Attorney fees – Harris Teeter lease	\$22,500.00
Attorney fees – CVS lease	\$17,500.00
Arch fees – Harris Teeter	\$75,000.00
Engineering fees – Harris Teeter	\$85,000.00
Engineering fees – CVS	\$30,000.00
Agency fees	\$15,000.00

59. No other supporting documentation relating to the expenses claimed was provided. The SALT POND TD Bank account records reflect the receipt of a \$357,700.00 wire originating from WILMINGTON TRUST on July 18, 2007. The next day, several checks totaling \$357,499.00 were written from the SALT POND account: (1) a check in the amount of \$309,834.00 made payable to ZIMMERMAN; (2) a check in the amount of \$13,239.00 made payable to BBC PROPERTIES; and (3) a check in the amount of \$34,426.00 payable to K.B.

60. There were no checks written on the SALT POND account to unrelated third party vendors from the time it was opened in June 2007 until January 2008. In addition, your Affiant examined ZIMMERMAN's personal bank account, which did not contain checks for these amounts written to law firms, engineering firms, architecture firms, or real estate firms. Thus, there is no evidence that the large check made payable to ZIMMERMAN constituted a reimbursement of funds expended to third parties relating to the SALT POND project.

**b. November 30, 2007 Draw Request**

61. On November 30, 2007, B1 authorized the wire transfer of \$225,000.00 in loan proceeds to the SALT POND TD Bank account. The "Construction Loan Advance Authorization Form" indicated that B1 received and reviewed a \$225,000.00 draw request on November 30, 2007. Included in the file was an e-mail from a BBC employee explaining that the funds to be drawn

were needed to pay a \$75,000 real estate commission fee and “arch/eng” fees of \$150,000.00. No other documents to substantiate the expenses were found in the file.

62. The SALT POND account at TD Bank received a \$225,000.00 wire transfer originating from WILMINGTON TRUST on November 30, 2007. SALT POND issued checks to ZIMMERMAN on November 30, 2007 in the amount of \$50,500.00, and on December 3, 2007 in the amount of \$83,000.00. K.B. was also issued a check for \$16,500.00 on December 3, 2007. The sum of these three checks was \$150,000.00.

63. Therefore, both principals received a share of the \$150,000.00, purportedly related to “arch/eng fees,” corresponding to their percentage ownership in the SALT POND project. There were no checks issued from the SALT POND TD Bank account to unrelated third party vendors in December 2007. In addition, your Affiant found no evidence of payments from ZIMMERMAN’s personal account requiring reimbursement.

**c. April 17, 2008 Draw Request**

64. Your Affiant further reviewed a WILMINGTON TRUST Wire Transfer Order Form dated March 14, 2008, which directed the transfer of \$150,000.00 in loan proceeds to the SALT POND TD Bank checking account. However, it appears this date is an error as the wire transfer was not completed until April 18, 2008. This wire was prompted by an e-mail request sent by a BBC employee to WILMINGTON TRUST in April 2008. The email stated “I have been instructed to request a draw for \$150,000.00 for reimbursement for arch/engineering costs to date.” No other documents, such as invoices, to substantiate the expenses were found in the file. On April 21, 2008, a \$150,000.00 check was issued from the SALT POND TD Bank account to ZIMMERMAN. From February through the end of April 2008, the only checks written on the SALT POND TD Bank account to unrelated third parties were a \$200.00 check to a State Agency, a \$2,435.00 check to an engineering firm, and checks totaling \$424.00 to a law firm. Again your Affiant found no evidence of payments from ZIMMERMAN’s personal account requiring reimbursement.

65. A review of ZIMMERMAN's personal TD Bank account records revealed, that on April 22, 2008, he deposited the \$150,000.00 check drawn on the SALT POND account into his personal bank account. The review further revealed that ZIMMERMAN maintained a balance of \$73,765.00 prior to this deposit. On May 20, 2008, ZIMMERMAN wire transferred \$150,000.00 from this account to a real estate attorney in Florida. A review of this attorney's trust account bank records revealed he wrote a \$150,000.00 check made payable to L. Bruce Neandross on May 22, 2008. Written in the check memorandum field is "Purchase of Bird Cay – Zimmerman." ZIMMERMAN lists Bird Cay as an investment in land on personal financial statements he submitted to WILMINGTON TRUST. Bird Cay is further described in the financial statements as "10 oceanfront lots Treasury Cay, Bahamas."

**d. June 13, 2008 Draw Request**

66. On June 13, 2008, WILMINGTON TRUST wire transferred \$110,000.20 in loan proceeds to the SALT POND TD Bank checking account. Based on the supporting documentation reviewed, this transfer was initiated by an e-mail sent to B1 from a BBC employee on June 13, 2008. The email stated, "Attached are current payables and Mike wants to draw 110K and wired to same account as previous wires." A document entitled "SALT POND PLAZA LLC A/P Aging Detail" and dated June 13, 2008 was found in the file. The document is a list of invoices from various vendors that were due for payment in June or already past their due dates. A review of the SALT POND account revealed that SALT POND issued two checks, in the total amount of \$110,000.00, on June 17, 2008. SALT POND issued one check to ZIMMERMAN in the amount of \$97,900.00 and another to BARRETT in the amount of \$12,100.00 in accordance with their percent ownership in the project. Thus, the loan proceeds received as a result of this draw request were issued to ZIMMERMAN and BARRETT, and not used to pay the invoices that appeared on the June 13, 2008 A/P Aging Detail report. Almost all of these same invoices were found to have been included in subsequent draw requests submitted to WILMINGTON TRUST.

**e. January 7, 2009 Draw Request**

67. On January 7, 2009, SALT POND submitted a draw request in the amount of \$237,165.00. According to documentation in WILMINGTON TRUST's loan file, WILMINGTON TRUST did not process the request and a handwritten note on the draw request indicated that no more available funds remained from the initial \$10 million dollar loan. In May 2009, ZIMMERMAN requested and received a subsequent \$2 million dollar construction loan from WILMINGTON TRUST to cover cost overruns.

**B. SHOPPES AT FIELDSTONE**

68. In December 2007, Kent County granted ZIMMERMAN approval to develop 15 acres of land with a shopping center including a 48,519 square foot anchor store, 35,935 square feet of strip space, and three pad sites. The land was owned by THE SHOPPES AT FIELDSTONE VILLAGE, LLC, which was wholly owned by North Dover Holdings, LLC. That entity, in turn, was wholly owned by TBC Enterprises, LLC. ZIMMERMAN and LEONE each owned a 50% interest in TBC Enterprises, therefore they each owned 50% of the SHOPPES AT FIELDSTONE project. In addition, ZIMMERMAN and LEONE also owned a 50% interest in North Dover 40, LLC. This entity was formed to develop single-family homes on land adjacent to the SHOPPES AT FIELDSTONE.

**1. Architecture and Engineering Costs**

69. A WILMINGTON TRUST Intra-Company Memorandum dated January 9, 2008, that B1 provided to WILMINGTON TRUST's Loan Committee stated that ZIMMERMAN and LEONE were requesting a construction loan in the amount of \$15,360,000.00 to develop the SHOPPES AT FIELDSTONE. The memorandum included a chart that showed ZIMMERMAN and LEONE would fund the estimated Architecture and Engineering costs of \$325,000.00. Your Affiant also reviewed the "Construction and Permanent Loan Agreement," dated January 17, 2008, made between WILMINGTON TRUST and the SHOPPES AT FIELDSTONE. The loan budget attached as Exhibit B to that loan agreement also indicated that the owners would fund the architect and engineering fees.

70. WILMINGTON TRUST's loan file for this project contained a January 2, 2008 letter faxed from BBC. The letter is addressed to B1 and signed by ZIMMERMAN. The letter presents a list of how the loan proceeds would be used. The following is reflected under line-items for architecture and engineering:

"N/A Engineering (Pd for \$175,000)"

"N/A Architecture (Pd for \$150,000)"

71. On January 15, 2008, LEONE submitted a payment application to WILMINGTON TRUST that requested \$375,000.00 to cover engineering and architect fees to date. An e-mail sent from an employee in WILMINGTON TRUST's construction loan administration group to B1 on February 7, 2008 stated: "At the borrower's request, via AIA, Melissa funded \$375,000.00 for A&E. Your budget states that would be paid from the borrower's equity. How would you like to proceed." A handwritten note on the e-mail indicates that "Per B1" \$175,000.00 of this draw should be allocated to project budget codes designated for land acquisition, a partner buy-out, miscellaneous closing costs, and interest reserve. The remaining \$200,000.00 was allocated to a contingency budget code per the same handwritten note. WILMINGTON TRUST uses budget codes to track spending on construction projects. As the owners should have paid for the engineering and architect fees, no amounts were budgeted by WILMINGTON TRUST for engineering and architect fees and the \$375,000.00 payment had to be allocated to budget codes unrelated to engineering and architect fees. Based on the evidence presented above, ZIMMERMAN and LEONE did not fund the engineering and architect fees as required by the loan agreement.

## **2. Undocumented Payment to Zimmerman and Leone**

72. Article 5.1 of the aforementioned loan agreement between WILMINGTON TRUST and the SHOPPES AT FIELDSTONE stated that the borrower agreed to open and maintain an account at the lender. It further stated that all project income would be collected and project expenses would be paid through this account. A bank account for the SHOPPES AT FIELDSTONE was thereafter established under ZIMMERMAN's control at WILMINGTON TRUST. A review of



the SHOPPES AT FIELDSTONE account records revealed that on May 21, 2008, ZIMMERMAN and LEONE both received checks in the amount of \$50,000.00. The original loan budget and the signed loan agreement did not provide for an equity take-out and no documents were located in WILMINGTON TRUST's loan file to explain the purpose of these payments.

73. Your Affiant encountered other payments issued to ZIMMERMAN, LEONE, or affiliated businesses from the SHOPPES AT FIELDSTONE account without documentation explaining the nature of the checks. The project was not generating rental income and loan proceeds obtained from WILMINGTON TRUST accounted for almost all funds deposited into the account at the time these payments were made. The payments, including the checks made payable to ZIMMERMAN and LEONE referenced above, are summarized in the chart below:

Date	Amount	Payee	Check Memo	Relationship
5/21/2008	\$50,000.00	ZIMMERMAN	Partner 1	ZIMMERMAN
5/21/2008	\$50,000.00	LEONE	Partner 2	LEONE
6/27/2008	\$10,000.00	North Dover 40, LLC	Temp Loan	ZIMMERMAN/LEONE
6/27/2008	\$10,000.00	BBC Properties		ZIMMERMAN
6/27/2008	\$10,000.00	Last Call Investments		LEONE
9/30/2008	\$6,000.00	North Dover 40, LLC		ZIMMERMAN/LEONE
11/11/2008	\$6,600.00	North Dover 40, LLC	Capital Call	ZIMMERMAN/LEONE
1/13/2009	\$5,000.00	TBC Enterprises, LLC	Loan	ZIMMERMAN/LEONE
<u>Total</u>	\$147,000.00			

### **3. Misappropriation of Additional Rent Payment**

74. ZIMMERMAN's aforementioned January 2, 2008 letter to B1 (see paragraph 70) also referred to an additional rent payment of \$262,000.00 that the shopping center's main tenant would be obligated to pay at the completion of its building. The January 2, 2008 letter also included a total estimated cost breakdown for the SHOPPES AT FIELDSTONE and a note that

the building construction costs were shown net of the \$262,000.00 payment. This suggests that, when received, the \$262,000.00 would be used to pay contractors.

75. On February 27, 2009, a check from the SHOPPES AT FIELDSTONE's main tenant, in the amount of \$262,000.00, was deposited into the project bank account. Based on the timing and the amount of the check, this check appears to represent the aforementioned additional rent payment. On March 3, 2009, Zimmerman and Leone were each issued a check for \$130,000.00 from the SHOPPES AT FIELDSTONE account.

#### **4. Failure to Pay Contractor from Draw Request**

76. According to documentation contained in WILMINGTON TRUST's loan file, the final draw application on the original loan for this project was submitted to WILMINGTON TRUST on November 25, 2008, for a total of \$961,729.19. The application detail listed an invoice from Nichols Excavating in the amount of \$341,604.36. WILMINGTON TRUST released \$825,446.81 into the SHOPPES AT FIELDSTONE bank account on December 3, 2008, and an additional \$135,982.38 on December 31, 2008, in full payment of the final draw application. A check in the amount of \$141,604.36 was issued to Nichols Excavating from the SHOPPES AT FIELDSTONE account on January 7, 2009, leaving an unpaid balance of \$200,000.00 on its invoice.

#### **5. Additional Funding Necessary**

77. After the aforementioned final draw application, the initial loan for the development of the SHOPPES AT FIELDSTONE had been exhausted without the project reaching completion. Based on interviews of former WILMINGTON TRUST employees and WILMINGTON TRUST documentation reviewed during the course of the investigation to date, your Affiant learned WILMINGTON TRUST decided it was in its best interest to fund completion of the project in an effort to improve the value of its collateral. A subsequent \$281,433.00 loan described as "emergency financing" was issued by WILMINGTON TRUST in June 2009 to pay past due accounts payable, including a portion of the \$200,000.00 owed to Nicholas from the final draw.

78. WILMINGTON TRUST eventually approved a third loan for over \$1 million to fund completion of the project.

### **C. COLLEGIAN PLAZA**

79. COLLEGIAN PLAZA HOSPITALITY GROUP II, LLC was formed in 2005 with ZIMMERMAN and LEONE each owning a 50% membership interest. The project for which COLLEGIAN PLAZA was formed consisted of a one acre assemblage of land located on W. Loockerman Street in Dover, Delaware purchased by ZIMMERMAN in phases between 2005 and 2007. On that land, ZIMMERMAN planned a mixed-use facility including over 8,000 square feet of retail space, 136 apartment units and a two level parking garage. Total WILMINGTON TRUST financing for the project consisted of six separate loans totaling \$2,189,000.00, detailed as follows:

<u>Loan #</u>	<u>Date Granted</u>	<u>Loan Amount</u>
5001	10/7/2005	\$249,000.00
5101	10/12/2005	\$240,000.00
5201	3/30/2006	\$150,000.00
5301	3/21/2007	\$800,000.00
5401	5/9/2007	\$500,000.00
5501	11/15/2007	\$250,000.00
	<u>Total</u>	\$2,189,000.00

A total of \$2,188,826.00 was drawn on these loans by ZIMMERMAN. Approximately \$1.3 million was used to purchase the parcels of land, with the balance used to pay for architectural and engineering costs, site work and to fund interest reserves. As of November 2009, the only physical activity associated with the project was the demolition of the existing structures. No construction had been completed at that time.

80. Your Affiant reviewed the source records including the loan files documenting the loan draw requests and to whom the draw request funds were ultimately paid. Based upon that review, there is probable cause that some loan funds were directed to and used for non-COLLEGIAN PLAZA project purposes.

81. On May 14, 2007, funds from a draw request of \$285,000.00 from the \$500,000.00 Loan #5401 were wired from WILMINGTON TRUST to the BBC operating account controlled by ZIMMERMAN. A review of the BBC operating account revealed that the balance on May 14, 2007 prior to the \$285,000.00 transfer was \$96,675.33. The only deposit made to that account on May 15, 2007 amounted to \$5,771.00. Therefore, the total balance available in the account on May 15, 2007, prior to any other transactions, consisted of the \$285,000.00 in COLLEGIAN PLAZA funds and \$102,446.00 in other funds.

82. On that same day, May 15, 2007, a \$100,000.00 wire transfer was made from the BBC operating account to an RBC CENTURA BANK account (hereafter referred to as "RBC CENTURA account") located in Florida held in the name of MICHAEL ZIMMERMAN, BRUCE NEANDROSS (hereafter referred to as "NEANDROSS") and JACKIE C. PRICE. A further review of the BBC operating account did not reveal any apparent payments for COLLEGIAN PLAZA related costs for a time period of approximately one-month surrounding the day of the \$100,000.00 transfer.

83. As set forth in paragraph 65 above, there is probable cause that ZIMMERMAN also provided funds from the SALT POND project to a real estate project in the Bahamas involving NEANDROSS.

84. A review of the RBC CENTURA account records revealed the balance of the account prior to the \$100,000.00 transfer on May 15, 2007 was approximately \$5,802.00. No other deposits to the account were made from May 15, 2007 through May 30, 2007. Therefore, the total balance in the account on May 15, 2007 was \$105,802.00. A further review of wire transfer detail indicated the following wire transfers were made from the RBC CENTURA BANK account:

<u>Date</u>	<u>Amount</u>	<u>Receiving Bank</u>	<u>Account Holder</u>	<u>Purpose</u>
5/17/2007	\$ 40,000.00	JP Morgan Chase	Neandross & Hubert	Construction
5/17/2007	\$ 30,000.00	Seacoast National Bank	Bruce Neandross	None Provided
5/18/2007	\$ 10,000.00	Seacoast National Bank	Bruce Neandross	None Provided
5/30/2007	\$ 20,000.00	JP Morgan Chase	Neandross & Hubert	Construction
<u>Total</u>	\$ 100,000.00			

85. Bank account documentation was reviewed for the SEACOAST NATIONAL BANK account referenced in the preceding schedule. This documentation revealed that at least a portion of the \$40,000.00 deposited into the SEACOAST NATIONAL BANK account appeared to be used to pay for landscaping costs and a credit card bill which are not associated with the COLLEGIAN PLAZA project.

86. As documented previously in this Affidavit, the BBC operating account was used by ZIMMERMAN to manage receipts and disbursements of funds related to his various business projects and operations as well as for personal financial transactions. Therefore, the BBC operating account balance normally consisted of co-mingled funds from various different sources.

87. The analysis above indicates that there was a three-step process by which ZIMMERMAN apparently used COLLEGIAN PLAZA funds to pay for non-COLLEGIAN PLAZA projects. COLLEGIAN PLAZA funds were drawn from WILMINGTON TRUST and transferred to the BBC operating account, which already included co-mingled funds from other sources. Then, the following day, funds from the BBC operating account were transferred to the RBC CENTURA account. Finally, funds were transferred from the RBC CENTURA account to the JP MORGAN CHASE and SEACOAST NATIONAL BANK accounts referenced in paragraph 84. There is no indication that the funds were used to pay for COLLEGIAN PLAZA related costs.

88. There is probable cause to believe that all or at least a portion of the \$100,000.00 of the \$285,000.00 drawn from COLLEGIAN PLAZA, Loan #5401 was expended on non-COLLEGIAN PLAZA project purposes for the following reasons:

- the timing of the transfers – \$80,000.00 of which occurred within three days of the initial funding from the draw received from WILMINGTON TRUST and an additional \$20,000.00 within two weeks – suggests that WILMINGTON TRUST funds were used in whole or part for the \$100,000.00 transaction;
- the structure of the transactions, which provided funds to the NEANDROSS project through several layers of fund transfers; and
- ZIMMERMAN's pattern of using WILMINGTON TRUST funds for personal expenditures, as detailed throughout this affidavit.

#### **D. COMPASS POINTE**

89. COMPASS POINTE, LLC was a real estate project developed by ZIMMERMAN to construct office buildings on North State Street in Dover, Delaware in July 2007. COMPASS POINTE is a limited liability company, which is owned 50% by ZIMMERMAN, and 50% by BBC, itself a ZIMMERMAN owned company. The COMPASS POINTE project consisted of two commercial buildings, one of which is a four story building, and the other, a two story building.

90. The financing for COMPASS POINTE consisted of four loans that were granted by WILMINGTON TRUST from 2007 through 2009. As of June 2010, the four loans encompassed a total exposure of \$7,702,017.00 for WILMINGTON TRUST. All of the funds pertaining to these loans had been fully drawn, and, at the time of the Forbearance Agreement, there were no additional amounts available to borrow on any of the loans. The four loans associated with COMPASS POINTE were as follows:

<u>Loan #</u>	<u>Loan Origination Date</u>	<u>Loan Amount</u>
5101	7/25/2007	\$6,000,000.00
1001	11/12/2008	\$518,225.00
5201	6/16/2009	\$250,561.00
5301	6/16/2009	\$933,231.00
	<u>Total</u>	\$7,702,017

91. Loan #5101 was the initial construction loan granted to ZIMMERMAN when WILMINGTON TRUST agreed to fund the construction of COMPASS POINTE. B1 was involved in the approval process of this loan and the disbursement process. This loan was initially represented as the only loan necessary to complete the entire construction of the building and the purchase of the corresponding property. In documentation presented to WILMINGTON TRUST's loan committee, it was represented by B1 that two floors of the building, or 48% of the space, was pre-leased. The two leases represented included a lease for McGlynn's Restaurant for the first floor, and a lease for BBC PROPERTIES for the fourth floor. Per loan closing documentation included in the COMPASS POINTE loan file, only the McGlynn's Restaurant lease was referenced and it appeared the BBC PROPERTIES lease was excluded.

92. To access the \$6 million loan funds, ZIMMERMAN was required to submit contractor quotes/invoices to WILMINGTON TRUST, and WILMINGTON TRUST would deposit the requested amount in the COMPASS POINTE WILMINGTON TRUST bank account. The requests were submitted by either ZIMMERMAN or LEONE. There were 16 total draw requests for the project in the total amount of \$6,000,000.00.

93. Your Affiant reviewed the documentation supporting these various draw requests, and noted that draw #6, dated January 3, 2008, in the amount of \$171,378.00, was funded by WILMINGTON TRUST. As part of that draw request, there was a \$100,000.00 line item to pay "R.C. Fabricators Deposit." Per review of the loan file, this \$100,000.00 amount was not supported by any contractor invoices or quotes as was the case with other line items. Moreover, this \$100,000.00 request was the only request in all of the draw requests reviewed associated

with COMPASS POINTE that lacked any supporting documentation. On January 11, 2008, \$100,000.00 was transferred from the COMPASS POINTE bank account to ZIMMERMAN's personal TD Bank account. Your Affiant reviewed ZIMMERMAN's personal TD Bank account for the four week period of December 26, 2007 through January, 25, 2008, which surrounded the \$100,000.00 deposit into ZIMMERMAN's personal account. During the aforementioned time period, there were 16 transactions totaling \$396,215.00.

94. None of the transactions, however, involved any payments to R.C. Fabricators from the personal account. Thus, once the \$100,000.00 was transferred from COMPASS POINTE's bank account to ZIMMERMAN's bank account, there is no indication that the funds were used to pay R.C. Fabricators or for the COMPASS POINTE project.

95. The remaining loans, which consist of Loan #1001, Loan #5201, and Loan #5301, were not controlled by ZIMMERMAN nor did ZIMMERMAN have the ability to access the funds. Each loan was either an interest reserve loan (Loan #1001); a loan paid directly to contractors by WILMINGTON TRUST due to unpaid accounts payable (Loan #5201); or a loan that was paid directly to contractors by WILMINGTON TRUST to complete the COMPASS POINTE project after a substantial budget overage (Loan #5301), which occurred while COMPASS POINTE's finances were under ZIMMERMAN's control.

## **VI. CASH COLLATERAL ACCOUNT**

96. As noted previously, on September 18, 2009, ZIMMERMAN entered into an "Amended and Restated Security Agreement" with WILMINGTON TRUST, in which ZIMMERMAN agreed to deposit 75% of any "Collateral" payments received from certain projects into a WILMINGTON TRUST account referred to as the cash collateral account. The account was designed to provide WILMINGTON TRUST with additional security in the event ZIMMERMAN defaulted on his loans. "Collateral" is defined in the agreement as ZIMMERMAN's share of "any right, title and interest in and to any and all cash and other property from profits, distributions, dividends, capital accounts, dissolutions, liquidations, refinancing, sales, transfers or any from any listed Companies or Projects." The listed Projects include the Dover Airport Plaza, "Route 8 and



Salisbury Road,” the Harrington Midway Shopping Center, and the Southfield Park Shopping Center.

97. On November 24, 2010, W1 received notice from a property management company via e-mail that Harrington Midway Park Center distributed \$90,000.00 to Ziyoma, LLC, and that Southfield Park Center distributed \$150,000.00 to Ziyoma, LLC. ZIMMERMAN owns 50% of Ziyoma, LLC. Pursuant to the aforementioned security agreement, ZIMMERMAN should have deposited into the WILMINGTON TRUST collateral account, \$90,000.00, which is equal to 75% of his 50% share of the \$240,000.00 in “collateral” distributed to Ziyoma, LLC. In an e-mail to BBC, also dated November 24, 2010, W1 requested confirmation that ZIMMERMAN’s share of the funds would be deposited into the cash collateral account. ZIMMERMAN responded in a November 30, 2010 e-mail that the funds were used to fund a capital call (i.e., the investment of funds) relating to another project.

98. WILMINGTON TRUST’s attorney sent a December 3, 2010 letter to ZIMMERMAN. The letter notified ZIMMERMAN that he was required by the security agreement to deposit with WILMINGTON TRUST a portion of the funds disbursed to Ziyoma, LLC., and explicitly stated that the security agreement required him to deposit future distributions with WILMINGTON TRUST. A review of records relating to the cash collateral account found that ZIMMERMAN did not make any deposits during December 2010.

99. On December 21, 2010, W1 received notice via an e-mail from the same property management company that ZIMMERMAN received \$95,000.00 from the sale of a Dover CVS property on December 17, 2010. The subject line of this e-mail stated, “Dover Airport Plaza distribution.” A review of ZIMMERMAN’s personal TD Bank account revealed that ZIMMERMAN received a \$95,000.00 wire transfer originating from Dover Airport Plaza, LLC on December 22, 2010. The next day, a \$95,000.00 check written on ZIMMERMAN’s personal TD Bank account and made payable to a third-party cleared the account. The check appears to bear ZIMMERMAN’s signature and a memo of “Cap Call.”

100. On January 11, 2011, ZIMMERMAN deposited a \$130,548.55 check into his personal TD Bank account, which held a balance of \$32,817.00 prior to this deposit. This check is written on an account titled Route 8 & Salisbury Rd LLC. WILMINGTON TRUST's attorney sent a letter dated January 14, 2011, that is addressed to another law firm in Wilmington and lists as the subject "Re: Michael Zimmerman." The letter states "As you know, the Route 8 property was recently sold and there are net sale proceeds. Michael Zimmerman has not deposited his share of the net proceeds with Wilmington Trust." WILMINGTON TRUST's attorney further requested in the letter for ZIMMERMAN to deposit his share of the sale proceeds. On January 13, 2011 a \$120,000.00 check written on ZIMMERMAN's personal TD Bank account and made payable to a third-party cleared the account. The check appears to bear ZIMMERMAN's signature and a memo of "Cap Call." A review of records relating to the cash collateral account found that ZIMMERMAN did not make any deposits during January of 2011.

101. The distributions received by ZIMMERMAN and the amount of money he should have deposited into the cash collateral account at WILMINGTON TRUST, but failed to, are summarized in the chart below:

<u>Date</u>	<u>Project</u>	<u>Distribution</u> <u>(ZIMMERMAN's Share)</u>	<u>Collateral</u> <u>(75% of Total)</u>
November 19, 2010	Harrington MPC	\$45,000.00	\$33,750.00
November 23, 2010	Southfield PC	\$75,000.00	\$56,250.00
December 17, 2010	Dover Airport Plaza	\$95,000.00	\$71,250.00
January 11, 2011	Rt 8 & Salisbury Rd	\$130,548.00	\$97,911.00
<u>Totals</u>		\$345,548.00	\$259,161.00

#### **VII. RELEVANT INFORMATION WITHHELD FROM WILMINGTON TRUST RELATED TO THE SALE OF ZIMMERMAN LOANS TO ONIX Z**

102. As previously documented, on March 30, 2011, ONIX Z purchased WILMINGTON TRUST's ZIMMERMAN defaulted loans for \$20.4 million.

103. ONIX Z is a subsidiary of THE ONIX GROUP which is headquartered in Kennett Square, Pennsylvania. THE ONIX GROUP owns, operates and develops various business ventures in the Mid-Atlantic region of the United States and in Florida. The managing members of ONIX Z are RONALD E. SCHAFER and STEVEN S. SILVER. W1 advised that prior to the sale of the ZIMMERMAN loans, SCHAFER and SILVER acknowledged being in a previous investor relationship with ZIMMERMAN, but indicated they were not close to ZIMMERMAN.

104. Upon review of e-mail correspondence related to the ONIX Z purchase and through information obtain from witness interviews, your Affiant learned that relevant information, known to ZIMMERMAN, was withheld from WILMINGTON TRUST which may have altered the details of the deal or may have negated the deal altogether.

105. On November 11, 2010, CONSTANTINE MALMBERG, an attorney who also acted as ZIMMERMAN's business partner in several development projects, sent ZIMMERMAN an email with the subject: "WT commercial paper." In the email, MALMBERG outlined a plan by which a separate company would be established to purchase ZIMMERMAN's commercial paper from WILMINGTON TRUST. MALMBERG described the possible financial arrangements of the deal, including the strategy of conducting pre-sales of the projects. MALMBERG also estimated the anticipated profit and cash flow after the purchase based upon his plan. MALMBERG explained that "Only we can do this deal because a hostile buyer cannot do presales..." MALMBERG advised "We need a liquid 3<sup>rd</sup> party (or group) for risk of something not closing ... and we cannot be bidders." MALMBERG included SCHAFER and SILVER on a list as "possible 3<sup>rd</sup> party partners." MALMBERG subsequently forwarded the email to Ron Schafer, a principal of THE ONIX GROUP, with the comment, "Ron; For your eyes only please."

106. Your affiant discovered a document attached to an email dated November 24, 2010, which outlined ONIX's strategy relating to the purchase of the ZIMMERMAN loans/projects from WILMINGTON TRUST. A section in that document referring to COMPASS POINTE stated, "Mike wants to buy it for \$4,500,000." Also included in this section is the comment, "Incentive

project for Mike. Let him keep the project and pay us debt service on \$4,500,000.00 at our interest rate for 6 months with option to pay off the loan w/i 6 months with payoff being \$4,500,000.00.” As of December 16, 2010, WILMINGTON TRUST had committed a total of \$9,223,406.00 in loan funds to COMPASS POINTE and had established a loan loss reserve of \$4,599,224.00. Therefore, the proposal included in the e-mail planned for ZIMMERMAN to effectively purchase COMPASS POINTE for less than 50% of the funds WILMINGTON TRUST had already committed to the project, or for approximately the amount WILMINGTON TRUST had written off as a loss on the project.

107. W1 advised that ZIMMERMAN basically refused to cooperate with the SPECTRUM GROUP. W1 added he had no knowledge that ONIX Z and ZIMMERMAN apparently had a preexisting relationship before ONIX Z began negotiating with WILMINGTON TRUST.

108. W4, who was W1’s supervisor within the Loan Recovery Group and responsible for maximizing the value obtained from ZIMMERMAN’s failed loans, advised he was not aware of any specific prior relationships or arrangements between ZIMMERMAN and ONIX Z.

109. During the interview of W4, W4 reviewed the document entitled “Z STUFF Proposal for each site” described previously in this Affidavit. After reviewing said document, W4 advised he was not aware that ZIMMERMAN was negotiating with ONIX Z, prior to ONIX Z’s purchase of the ZIMMERMAN loans from WILMINGTON TRUST, for him to purchase back the COMPASS POINTE project from ONIX Z for \$4.5 million. W4 concluded by stating he would not have recommended acceptance of WILMINGTON TRUST’s deal with ONIX Z if he knew it was not what he considered as an arm-length transaction between ONIX Z and ZIMMERMAN.

#### **VIII. SUBJECT LOCATION - 144 KINGS HIGHWAY S.W., DOVER, DELAWARE (THIRD FLOOR)**

110. On September 10, 2012, your Affiant reviewed mailings made to the Subject Location for the time period June 10, 2012 through July 8, 2102. This review indicated that the following entities, among other individuals and entities, received mail at the Subject Location: MICHAEL

ZIMMERMAN, SALVATORE LEONE, BBC PROPERTIES, INC., COMPASS POINTE, LLC and SALT POND PLAZA, LLC.

111. During the course of the investigation, numerous documents were reviewed including bank statements, contractor invoices, loan draw requests and construction loan agreements which indicated that BBC and various ZIMMERMAN-related entities used the Subject Location as their mailing address.

112. A review of BBC's website, [www.bbcpropertiesinc.com](http://www.bbcpropertiesinc.com) on October 2, 2012, revealed that BBC lists its contact address as 144 Kings Highway, S.W., Dover, Delaware 19901.

113. On several occasions over the course of July 2012 through September 2012, an FBI Agent conducted surveillance at the Subject Location and observed ZIMMERMAN's vehicle, a 2007 Range Rover, black in color, bearing a Delaware license plate parked adjacent to the Subject Location. A check of the Delaware Division of Motor Vehicle records revealed that the license plate was registered to an entity associated with ZIMMERMAN. The FBI Agent also, on several occasions, surveilled ZIMMERMAN driving said vehicle to/from the Subject Location.

114. On August 31, 2012 an FBI Agent made contact with an employee of the "Governor's Café," a business establishment located on the ground floor of the Subject Location. Said employee advised that ZIMMERMAN maintains a private office located on the third floor of the Subject Location and that the second floor of the Subject Location is vacant.

## **IX. SCOPE OF SEARCH**

### **A. General**

115. Based upon this investigation and my training and experience, I believe that ZIMMERMAN is currently operating his business affairs from the Subject Location.

116. Based on my training and experience and the training and experience of other investigators assigned to this case, I know that it is common for individuals and businesses involved in

financial crimes to maintain financial and business documents and records, including in electronic and hard copy form, relating to their business affairs. These documents and records are routinely retained for long periods of time in secure and accessible locations, such as business offices, for tax and other business purposes. These documents and records will show the acquisition, conversion, movement, secretion, transfer and distribution of currency, real property, and business property.

117. Based on my training and experience, the training and experience of other investigators assigned to this case and the facts described above, there is probable cause to believe that there will be records, documents, and/or electronic data created on and stored at the Subject Location, as further described in Attachment B, that constitutes evidence of, the fruits of, or instrumentalities of violations of 18 U.S.C. §§ 1344, 1349, 1014, and 1957.

118. The records or documents created and retained by individuals in financial crimes also often include electronic correspondence; U.S. Postal Service and/or next day carrier services documents and receipts; investor records; contracts; loan documents, photographs; appointment books; airline and other travel tickets and receipts; bank account records; and other financial instruments.

119. Individuals and businesses involved in financial crimes create such documents, records and information by various means, including but not limited to, computers, printers, facsimile machines, and telephones, telephone answering machines, cellular telephones and cameras. These individuals and businesses also maintain such documents, records and information in various forms including but not limited to, electronic, magnetic, photographic and tangible.

120. Your Affiant has reviewed numerous documents provided by third parties which show that ZIMMERMAN communicated frequently with WILMINGTON TRUST, ONIX Z and other individuals and entities regarding ZIMMERMAN related projects using the e-mail account [bbcprop@aol.com](mailto:bbcprop@aol.com).

121. In addition, your Affiant has reviewed numerous documents indicating that ZIMMERMAN's administrative assistant, MICHELE WYATT, communicated frequently with WILMINGTON TRUST and other individuals and entities regarding ZIMMERMAN related projects using the e-mail account wyattmichele@comcast.net.

**B. Computer, Electronic Storage and Forensic Analysis**

122. As described above and in Attachment B, this application seeks permission to search for records that might be found on the Subject Location, in whatever form they are found. One form in which the records might be found is data stored on a computer's hard drive or other storage media. Thus, the warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Federal Rule of Criminal Procedure 41(e)(2)(B).

123. *Probable cause.* I submit that if a computer or storage medium is found on the Subject Location, there is probable cause to believe those records will be stored on that computer or storage medium, for at least the following reasons:

- a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.
- b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.

- c. Wholly apart from user-generated files, computer storage media—in particular, computers' internal hard drives—contain electronic evidence of how a computer has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory “swap” or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.
- d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.”
- e. Based on actual inspection of other evidence related to this investigation, I am aware that computer equipment was used to generate, store, and print documents and e-mails used in the fraud scheme, conspiracy to commit bank fraud, the making of false statements to a financial institution, and engaging in financial transactions involving specified unlawful activity. There is reason to believe that there is a computer system currently located on the Subject Location.

124. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only computer files that might serve as direct evidence of the crimes described on the warrant, but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any storage medium in the Subject Location because:

- a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers,



e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created, although this information can later be falsified.

- b. Forensic evidence on a computer or storage medium can also indicate who has used or controlled the computer or storage medium. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, e-mail, e-mail address books, “chat,” instant messaging logs, photographs, the presence or absence of malware, and correspondence (and the data associated with the foregoing, such as file creation and last-accessed dates) may be evidence of who used or controlled the computer or storage medium at a relevant time.
- c. A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions about how computers were used, the purpose of their use, who used them, and when.
- d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, computer evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves.

Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

- e. Further, in finding evidence of how a computer was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium. For example, the presence or absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user's intent.

125. *Necessity of seizing or copying entire computers or storage media.* In most cases, a thorough search of a Subject Location for information that might be stored on storage media often requires the seizure of the physical storage media and later off-site review consistent with the warrant. In lieu of removing storage media from the Subject Location, it is sometimes possible to make an image copy of storage media. Generally speaking, imaging is the taking of a complete electronic picture of the computer's data, including all hidden sectors and deleted files. Either seizure or imaging is often necessary to ensure the accuracy and completeness of data recorded on the storage media, and to prevent the loss of the data either from accidental or intentional destruction. This is true because of the following:

- a. The time required for an examination. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing evidence of how a computer has been used, what it has been used for, and who has used it requires considerable time, and taking that much time on Subject Location could be unreasonable. As explained above, because the warrant calls for forensic electronic evidence, it is exceedingly likely that it will be necessary to thoroughly examine storage media to obtain evidence. Storage media can store a large volume of information. Reviewing that information for things described in the warrant can take weeks or months, depending on the volume of data stored, and would be impractical and invasive to attempt on-site.
- b. Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software, and

configurations. Therefore, searching them sometimes requires tools or knowledge that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on the Subject Location. However, taking the storage media off-site and reviewing it in a controlled environment will allow its examination with the proper tools and knowledge.

- c. Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off-site reviewing with specialized forensic tools.

126. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit seizing, imaging, or otherwise copying storage media that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the media or information consistent with the warrant. The later review may require techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of a hard drive to human inspection in order to determine whether it is evidence described by the warrant.


127. **BBC Properties, Inc.** ("BBC") is a functioning company that conducts legitimate business. The seizure of BBC's computers may limit BBC's ability to conduct its legitimate business. As with any search warrant, I expect that this warrant will be executed reasonably. Reasonable execution will likely involve conducting an investigation on the scene of what computers, or storage media, must be seized or copied, and what computers or storage media need not be seized or copied. Where appropriate, agents will copy data, rather than physically seize computers, to reduce the extent of disruption. If employees of BBC so request, the agents will, to the extent practicable, attempt to provide the employees with copies of data that may be necessary or important to the continuing function of BBC's legitimate business. If, after inspecting the computers, it is determined that some or all of this equipment is no longer necessary to retrieve and preserve the evidence, the government will return it.

## X. CONCLUSION

128. I respectfully, request that the Court issue an order pursuant to which the Affidavit and all papers submitted in support of this application be filed under seal. The evidence to be seized and the information upon which the application is based are relevant to an ongoing investigation and premature disclosure of the Affidavit and related documents may have a negative impact on this investigation and jeopardize its effectiveness.

129. Based on the facts set forth above, your Affiant respectfully submits that there is probable cause to believe that there is presently contained within the property set forth in Attachment A, files correspondence, memoranda, computers, storage medium, loan documents, bank and other financial records and other materials as more particularly described in Attachment B, that constitute evidence of, the fruits of, or instrumentalities of violations of 18 U.S.C. §§ 1344, 1349, 1014, and 1957. Your Affiant respectfully requests that a search warrant be issued for the premises referenced in Attachment A of this Affidavit.

Respectfully submitted,

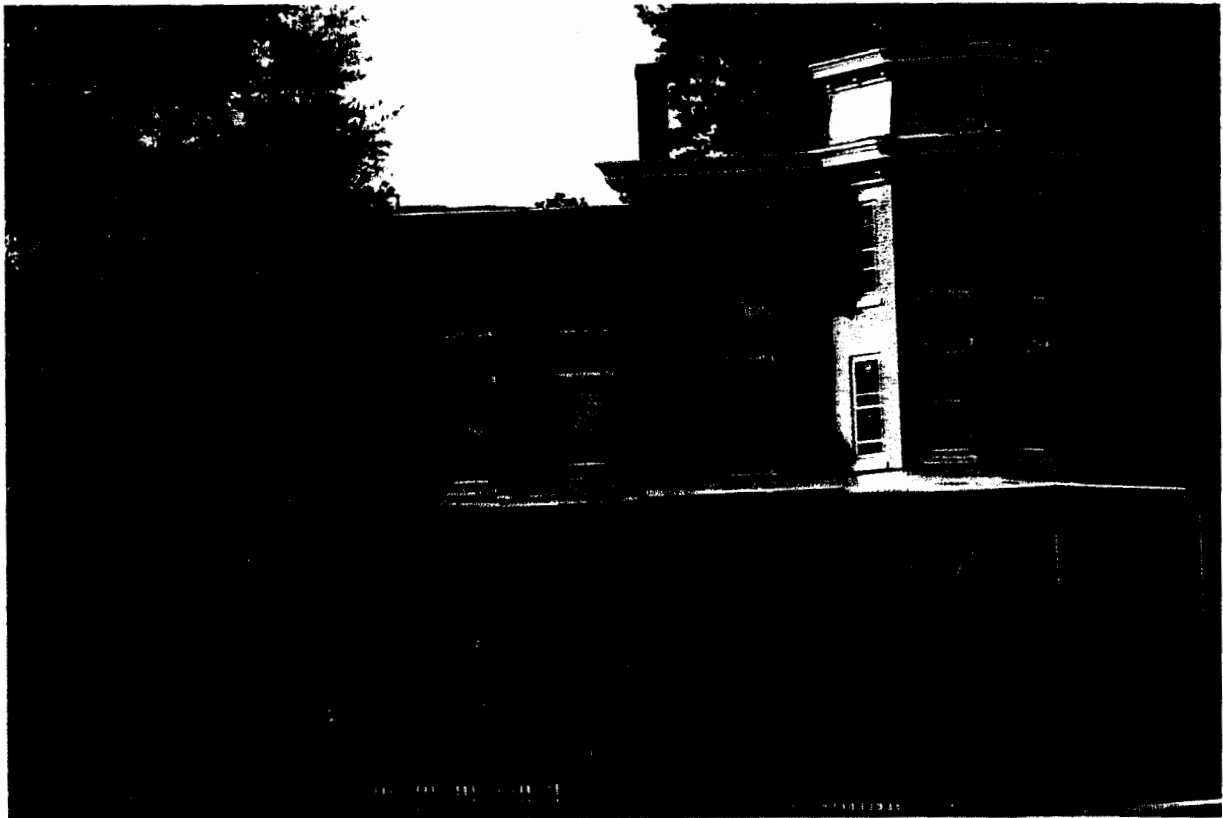
  
\_\_\_\_\_  
Greg S. Mrozek  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me on October 3, 2012

  
\_\_\_\_\_  
HONORABLE MARY PAT THYNGE  
UNITED STATES MAGISTRATE JUDGE

**ATTACHMENT A**  
***Property to be Searched***

The Subject Location is located on the third floor of 144 Kings Highway S.W., Dover, Delaware. The Subject Location is a three-story, red-brick building with light tan trim located near Delaware's State Legislative Hall district in the downtown Dover, Delaware area. There exists a porch located on the front of the building and affixed near the roof section of the porch above the front door to the building are the numbers "144." Located on a portion of the roof above the third floor is a round green sign with the letter "Z", yellow in color, in the center. The building sits on a tri-angular piece of property on the corner of Kings Highway Southwest and American Avenue. The following is a photograph of the Subject Location.



**ATTACHMENT B**

***Property to be Seized***

The items to be seized from the location described in Attachment A (the Subject Location) constitute evidence, fruits or instrumentalities of violations of Bank Fraud (18 U.S.C. § 1344), Conspiracy to Commit Bank Fraud (18 U.S.C. § 1349), the Making of False Statements to a Financial Institution (18 U.S.C. § 1014), and Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity (18 U.S.C. § 1957), and/or property designed or intended for use or which is or has been used as the means of committing these violations, including but not limited to the following:

1. All records relating to violations of Bank Fraud (18 U.S.C. § 1344), Conspiracy to Commit Bank Fraud (18 U.S.C. § 1349), the Making of False Statements to a Financial Institution (18 U.S.C. § 1014), and Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity (18 U.S.C. § 1957), including but not limited to those violations involving MICHAEL ZIMMERMAN and the ZIMMERMAN-RELATED ENTITIES, as set forth in the attached affidavit, including:

- a. Records and information relating to the Zimmerman-related entities, as set forth in the attached affidavit and incorporated herein;
- b. Records and information relating to the e-mail accounts bbcprop@aol.com and wyattmichele@comcast.net;
- c. Records and information relating to any and all financial dealings between Michael Zimmerman the Zimmerman-related entities, and/or his employees and

agents, and Wilmington Trust Corp. Wilmington Trust Co. and/or its employees and agents.

- d. Records and information relating to all correspondence between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents with Wilmington Trust Corp., Wilmington Trust Co. and/or its employees and agents.
- e. Records and information relating to any and all financial dealings between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents with The Onix Group, OnixZ, LLC, and/or its employees and agents.
- f. Records and information relating to all correspondence between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents with The Onix Group, OnixZ, LLC, and/or its employees and agents.
- g. Records and information relating to any and all financial dealings between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents, and partners of the Zimmerman-related entities, including but not limited to:
  - i. Salvatore J. Leone
  - ii. Last Call Investments, Inc.
  - iii. Ralph J. Larson

- iv. Alan Levin
  - v. Kevin Barrett
  - vi. Constantine F. Malmberg, III
  - vii. Kenneth J. Young
  - viii. Stephen S. Silver
  - ix. Banana Wind Properties, LLC
  - x. Charles C. Rodriguez
  - xi. L. Bruce Neandross
  - xii. Phillip J. McGinnis
  - xiii. TBC Enterprises, LLC
  - xiv. Chestertown I, LLC
- h. Records and information relating to all correspondence between Michael Zimmerman, the Zimmerman-related entities, and /or his employees and agents, and partners of the Zimmerman-related entities.
- i. Records and information demonstrating indicia of occupancy, ownership, or use of the Subject Location, including but not limited to, utility and telephone bills; canceled envelopes; rental, purchase, or lease agreements; identification documents; and keys.



- j. Records and information relating to the travel of Michael Zimmerman.
  - k. Records and information relating to the incorporation, formation, and/or operation of the Zimmerman-related entities.
  - l. Records and information containing contact and appointment information relating to individuals involved with the Zimmerman-related entities, including but not limited to employees and/or agents of BBC, the Zimmerman-related entities, Wilmington Trust Corp., Wilmington Trust Co., The Onix Group, and OnixZ, LLC.
2. For any computer or storage medium whose seizure is otherwise authorized by this warrant, and any computer or storage medium that contains or in which is stored records or information that is otherwise called for by this warrant (hereinafter, "COMPUTER"):
- a. evidence of who used, owned, or controlled the COMPUTER at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, user profiles, email, email contacts, "chat," instant messaging logs, photographs, and correspondence;
  - b. evidence of software that would allow others to control the COMPUTER, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;

- c. evidence of the lack of such malicious software;
- d. evidence of the attachment to the COMPUTER of other storage devices or similar containers for electronic evidence;
- e. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the COMPUTER;
- f. evidence of the times the COMPUTER was used;
- g. passwords, encryption keys, and other access devices that may be necessary to access the COMPUTER;
- h. documentation and manuals that may be necessary to access the COMPUTER or to conduct a forensic examination of the COMPUTER;
- i. records of or information about Internet Protocol addresses used by the COMPUTER;
- j. records of or information about the COMPUTER's Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked" or "favorite" web pages, search terms that the user entered into any Internet search engine, and records of user-typed web addresses;
- k. contextual information necessary to understand the evidence described in this attachment.

3. Routers, modems, and network equipment used to connect computers to the Internet.

As used above, the terms “records” and “information” includes all forms of creation or storage, including any form of computer or electronic storage (such as hard disks or other media that can store data); any handmade form (such as writing); any mechanical form (such as printing or typing); and any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, or photocopies).

The term “computer” includes all types of electronic, magnetic, optical, electrochemical, or other high speed data processing devices performing logical, arithmetic, or storage functions, including desktop computers, notebook computers, mobile phones, tablets, server computers, copiers, scanners, fax machines, printers, and network hardware.

The term “storage medium” includes any physical object upon which computer data can be recorded. Examples include hard disks, RAM, floppy disks, flash memory, CD-ROMs, and other magnetic or optical media.